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Supreme Court, U.S.
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No. 99-7000

In The

Supreme Court of the United States

BOBBY LEE RAMDASS,

Petitioner,

v.

RONALD ANGELONE, Director,
VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

JOINT APPENDIX
VOLUME I, PAGES 1 TO 190

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VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA,	
-vs-	CRIMINAL DOCKET NO. 77396
BOBBY LEE RAMDASS,	(Filed April 29, 1993)
Defendant.	

Circuit Courtroom No. 4G
Fairfax County Judicial Center
Fairfax, Virginia

Thursday, January 28, 1993

The above-entitled matter came on for trial before THE HONORABLE QUINLAN H. HANCOCK, Judge, and jury, in and for the Circuit Court of Fairfax County, Virginia, commencing at 10:00 o'clock a.m.

* * *

[64] not to discuss this with anyone, but I would certainly highly advise you not to until these entire matters are concluded. Thank you again.

THE COURT: The court stands in recess.

(Whereupon, at 11:59 o'clock a.m., the trial in the above-entitled matter stood in recess.)

(Whereupon, at 3:20 o'clock p.m., the jury returned to the courtroom.)

VERDICT

THE CLERK: Members of the jury, have you reached your verdict?

THE JURY: Yes, we have.

THE CLERK: Is your verdict unanimous?

THE JURY: Yes.

THE CLERK: We, the jury, on the issue joined in the case of the Commonwealth of Virginia versus Bobby Lee Ramdass, Defendant, find the Defendant guilty of Count III, using a firearm while committing the murder of Mohammad D. Kayani, as charged in the Indictment, and fix his punishment at a term of imprisonment of four years.

We, the jury, on the issue joined in the case of the Commonwealth of Virginia versus Bobby Lee Ramdass, [65] Defendant, find the Defendant guilty of Count I, capital murder, during the commission of a robbery while the Defendant was armed with a deadly weapon, as charged in the Indictment.

THE COURT: Either counsel – any counsel want the jury polled?

MR. PIOTROWSKI: I would request that the jury be polled, Your Honor.

THE CLERK: If this is your verdict, please answer yes when I call your name. If not, answer no.

POLLING OF THE JURY

THE CLERK: John Tkach.

MR. TKACH: Yes.

THE CLERK: Jane May.

MS. MAY: Yes.

THE CLERK: Michael Volpe.

MR. VOLPE: Yes.

THE CLERK: Peter McClellan.

MR. McCLELLAN: Yes.

THE CLERK: Joanne Padberg.

MS. PADBERG: Yes.

THE CLERK: Thomas Schuessler.

MR. SCHUESSLER: Yes.

[66] THE CLERK: Mary McDaniel.

MS. McDANIEL: Yes.

THE CLERK: Gary Shavlik.

MR, SHAVLIK: Yes.

THE CLERK: Ruth McEntire.

MS. McENTIRE: Yes.

THE CLERK: Peggy Sillex.

MS. SILLEX: Yes.

THE CLERK: Margaret McNette.

MS. McNETTE: Yes.

THE CLERK: Patrick Noud.

MR. NOUD: Yes.

THE CLERK: Ladies and gentlemen, that will conclude the proceeding for today. What I would ask you to do, please, is to return tomorrow morning, not at 10:00, but at 9:00, if you will, please.

During the overnight recess please do not discuss the matter with anyone.

Nine o'clock tomorrow morning, please.

(The Jurors retired from the courtroom, and the following was had outside the hearing of the jury.)

THE COURT: Mr. Ramdass, if you will please stand.

* * *

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA,	CRIMINAL DOCKET NO. 77396
-vs-	
BOBBY LEE RAMDASS,	(Filed April 29, 1993)
Defendant.	

Fairfax County Judicial Center
Courtroom 4G
Friday, January 29, 1993

The above-entitled matter came on to be heard, with a Jury, before the HONORABLE QUINLAN H. HANCOCK, Judge, in and for the Circuit Court of Fairfax County, in the Courthouse, 4110 Chain Bridge Road, Fairfax, Virginia, beginning at 9:00 o'clock a.m.

* * *

[8] murder.

I think under that case we're closed out on the violence theory and we will be proceeding under the alternative theory of future dangerousness in the course of this sentencing trial.

THE COURT: All right. Your motion is granted.

MR. PIOTROWSKI: Thank you, Your Honor.

THE COURT: At the beginning of this matter there was a rule on the witnesses in this case, including

the Defendant's mother through the penalty stage. She was to be excluded during this phase

Are there any witnesses in the Courtroom at this time?

(No response.)

I'll leave it up to counsel to recognize any witnesses who may appear in the Courtroom.

MR. PIOTROWSKI: I recognize none at this time, Your Honor.

THE COURT: Any thing further before we bring the Jury in?

MR. HORAN: Your Honor, is there any special way you want us to number the exhibits for purposes of the

* * *

[12] can make the determination whether or not there is a possibility or I'm sorry, probability that he would commit future acts of violence, future acts of dangerous conduct, the so called dangerousness prong of capital punishment law.

We will present to you evidence, among other things, not going into it all, that in 1988 he was convicted of a strong arm robbery. Beat a man in the course of that robbery. The police went out hunting for him, arrested him. He was found in his home in the bed, a loaded pistol on the nighstand beside him.

The officer placed him under arrest, cuffed him, took him out of the house. He broke and ran. The officer

chased him. They had battle and the officer finally arrested him.

The evidence will be he was still a juvenile at that time, sixteen, almost seventeen years of age. He was certified to stand trial as an adult and eventually was tried as an adult. Pled guilty to the strong arm robbery and was sentenced to serve seven years in the Virginia Penitentiary. That sentence was rendered in the summer of 1988.

The evidence will be he went to the [13] Penitentiary of Virginia, went to South Hampton, which is a place for youthful offenders. He served time and was finally paroled in May of 1992.

Among other things, our evidence will be that beginning in the summer of 1992, he committed a great number of criminal violations.

Among those violations we'll present to you evidence of things he did in August of 1992. On August 25, 1992, the evidence will be he was one of the gunmen in the armed robbery of the Pizza Hut restaurant.

He was tried for that robbery. He was convicted of that robbery and in that proceeding he wound up with convictions for two robberies, the use of a gun in two robberies and abduction of one of the women that was in the store. That was August 25, 1992.

The evidence will be that on August 29th, 1992, he and another man entered the Bragg Towers Hotel, just off Route 95. They entered and this Defendant at the point of a gun demanded the money of the clerk. The clerk was cooperating and he told the clerk to turn his back, the

evidence will be the clerk was afraid he was going to be shot. Wouldn't turn his back.

The evidence will be that this Defendant [14] brutally assaulted that clerk. Struck him with the gun and pistol whipped him and eventually took his money. August 29th, 1992.

The evidence will be on August 30th, 1992, this Defendant with Eddie O'Connor, Shane Singh, and a young man by the name of Theo Sharp, went driving around in Arlington, right in the area of where 395 splits Arlington into the north half and the south half.

Over by National Orthopedic Hospital they stopped. They intended to go in and rob one of the motels over there. This Defendant, armed with the same .38 with which he killed Mr. Kayani, Eddie O'Connor and Shane Singh walked through a long tunnel that goes underneath 395, emerged on the other side headed for the motel where they were going to do the robbery.

As they were going along they saw a man drive in and park his car in the park. The man was driving a taxi cab, Silver Cab. The man was named Emmanuel Selassie. Emmanuel Selassie is a cab driver. Been in this country about twenty years. He works as a cab driver off and on. Was finishing a couple of hours of work as a cab driver that day, pulled in to the parking place.

The evidence will be that Ramdass says let's [15] get that guy. They approached the cab. O'Connor got in one side and Ramdass put the gun to the head of the cab driver. Right here. (Indicating) Tore apart his face.

He said give us your money. The man said hold it. Don't get excited. I'll give you what I got. It was in his pockets. He had fifty bucks. He didn't turn because the gun was right there. He handed the money out. He said that's all of got. I don't have anything else.

The evidence will be that Ramdass clicked the gun and shot him. It went through is head and came out over here. (Indicating)

He was left there lying in that cab in a pool of blood and he survived the whole thing.

He'll be here this morning to testify to you about that shooting.

Members of the Jury, our evidence will be designed to show you the potential for future dangerousness on the part of this Defendant is clear.

At the end of all the evidence we will ask you to sentence him to death. Thank you.

THE COURT: Mr. Piotrowski?

MR. PIOTROWSKI: Your Honor, I requested that I defer my opening statement.

[16] THE COURT: All right. Who's your first witness, please?

MR. HORAN: Investigator Farrell.

EVIDENCE ON BEHALF OF THE COMMONWEALTH

Whereupon

INVESTIGATOR G. W. FARRELL

a witness, was called for examination by counsel on behalf of the Commonwealth and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HORAN:

Q State your full name please and your occupation?

A G. W. Farrell, Investigator, Fairfax County Police Department, currently assigned to the robbery squad.

Q How long have you been a police officer?

A Approximately sixteen years.

Q How long have you been assigned to the robbery squad?

A Approximately seven years.

Q Did there come a time that you got involved in an investigation into the robbery of a man by the name of [17] Frederick Thompson?

A Yes, sir.

Q When and where did that robbery occur?

A That occurred on February 20th, 1988. It occurred in front of 3501 Holly Hill Road which is located within Fairfax County in the Route 1 area.

Q What kind of robbery was that?

A A strong arm robbery.

Q Did there come a time when you took the Defendant into custody for that robbery?

A Yes, sir.

Q How did you receive him?

A It was at the Mount Vernon substation. He had already been placed under arrest.

Q Who had done that; do you know?

A An Officer Scott Colvert.

Q Directing your attention to May of 1988.

Did you testify before the Grand Jury in that case?

A Yes, sir, I did.

Q And did an indictment of this Defendant result?

A Yes, sir.

[18] Q Do you know what ultimately happened with that indictment?

A Yes, sir. It went to Circuit Court where he was found guilty and I believe received seven years.

Q Was he an adult or a juvenile at the time that offense was committed?

A At the time he was a juvenile and he was tried as an adult.

Q Is there some procedure that is followed in order to do that?

A Yes, sir. You have to go through Juvenile Court where they have the proper procedures where he is checked for record and everything. Goes in front of the Judge –

MR. PIOTROWSKI: I'm going to object, Your Honor, it's a statement as to what the procedures are and what the law is that's applicable.

THE COURT: His answer yes is sufficient.

MR. PIOTROWSKI: Thank you.

THE COURT: Yes, sir. What's your next question?

BY MR. HORAN:

Q Was he in fact certified to stand trial as an [19] adult?

A Yes, sir.

MR. HORNA: Your Honor, I would offer into evidence as Commonwealth's Exhibit Number 1A the indictment for robbery. As 1B the guilty finding upon a plea of guilty on June 8th of 1988 and as Commonwealth's Exhibit Number 1C, the sentencing order where on July 15th, 1988, he was sentenced upon his conviction of that robbery.

THE COURT: Have you seen them, Mr. Piotrowski?

MR. PIOTROWSKI: I have seen them, Your Honor, and I have no objection to any of those.

THE COURT: All right. If you'll give them to the Clerk, 1A, 1B and 1C.

(The documents referred to above were marked Commonwealth's Exhibit Nos. 1A, 1B and 1c, for identification.)

(The documents heretofore marked Commonwealth's Exhibit Nos. 1A, 1B and 1C for identification were received in evidence.)

• • •

[22] A Yes sir, I do.

Q How long have you know him?

A Since 1985.

Q What was the first connection you had with him?

A My first connection was an investigation that I conducted in which Mr. Ramdass was identified as a person who had committed a purse snatch of an elderly female on Beacon Hill Road.

Q Did you arrest him in connection with that?

A Yes, sir, I did.

Q What if anything did he tell you about the purse snatch?

A Mr. Ramdass explained to me the reason that he had stolen the purse was that he had purchased a moped from an individual. He had not paid that person back and he owed that person some money. That's why he took the purse.

Q Now, directing your attention to March 4, 1988, did you have occasion to make an arrest of the Defendant on that day?

A Yes, sir, I did.

Q Will you tell His Honor and the Jury how that

* * *

[28] Whereupon

INVESTIGATOR GARY A. HEALY

a witness, was called for examination by counsel on behalf of the Commonwealth and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HORAN:

Q State your full name please and your occupation?

MR. PIOTROWSKI: Your Honor, if we may have just a minute. We have – we apparently have a witness that has entered the Courtroom.

(Brief recess.)

THE WITNESS: I'm Investigator Gary A. Healy, I'm an investigator with the Fairfax County Police Department assigned to the robbery section of the major crimes bureau.

BY MR. HORAN:

Q How long have you been a police officer?

I've been a police officer for almost twenty three years. I've been an investigator for almost sixteen.

Q Did there come a time when you became involved [29] in an investigation into the robbery of the Pizza Hut that occurred on August 25, 1992?

A Yes, sir, on the following day.

Q And did there come a time when you were involved in arrests in connection with that incident?

A September 10th and September 11th of this year, yes, sir. I mean last year.

Q And tell us who was arrested in connection with that?

A The Defendant to my right, (Indicating), Shane Singh, Eddie O'Connor and another gentleman by the name of Theo Sharp.

Q Directing your attention to September of 1992, did you appear before the Fairfax County Grand Jury?

Yes, sir.

Q In connection with that event?

A I did.

Q Did you testify in the case of Commonwealth versus Bobbie Ramdass?

A I did.

Q Do you recall what he was indicted for in September of '92?

A He was indicted for two robberies, one [30] abduction and two counts of using firearms in those crimes.

Q That's the Pizza Hut crime?

A Yes, sir.

Q What was the abduction charge?

A The abduction was one of the employees that was taken at gun point in the restaurant. Forced from one part of the restaurant to the other.

Q And who was that employee?

A A girl, Robina Khun.

Q How many gunmen were involved in that robbery?

A There were two gunmen in that robbery.

Q And who were they?

A Shane Sing was one of the gunmen. The Defendant to my right was the other gunman.

Q Was anyone injured in the course of that robbery?

Yes, sir. One of the victims, Richard Imlow, was struck by the gunman, later identified as the Defendant after the robbery was complete.

MR. HORAN: Your Honor, I would offer into evidence as Commonwealth's Exhibit Number 2A the indictment for two robbery counts, abduction and two

* * *

[35] A Christopher Allen Crissel.

Q Are you employed, Mr. Crissel?

A Yes, sir, I am self employed.

Q Directing your attention to August 29, 1992, were you employed at that time?

A Self employed, sir.

Q And were you working on that day?

A Yes, sir.

Q Where would that have been?

A Bragg Towers at 99 South Bragg Street, Alexandria, Virginia.

Q What kind of a facility is Bragg Towers?

A It's an apartment-hotel, sir.

Q Did there come a time on that day when something unusual occurred?

A Yes, sir. At about 3:45 in the afternoon I was working on the company's computer, trying to do something with the reservation system, when two black males came to the right front door of the building. We have a left front door and a right front door, attempting to get in.

We have a security system of some sort where we have to release the door, the lock, to let somebody in [36] and the right door does not provide that. So it immediately let me know that the gentlemen were not aware of that and I pointed them over to the left door.

At that point they came to the left door. At that time in the afternoon we generally let people in freely without question. We do have a speaker. So I released the door and they came in.

Q Would you tell His Honor and the Jury what occurred next?

A At that point, the gentlemen, the Defendant, I guess you want me to point him out, came to the front counter. We have a front counter and we have a side counter. It sort of goes like an L, okay.

Came to me and asked me if I had any efficiency apartments for rent. At that point, I was a little leery of the fact that – that something just didn't – just went here to my heart (Indicating), something felt funny about the whole thing, but I fumbled around trying to act like I was looking to see if we had something available.

As I turned my head to the right back to him – I had gone to the left – the desk was this way (Indicating) and I sort of opened the draw [sic] looking for a [37] card of some sort that usually tells us what's available, what's not available. When I turned back there was a gun pointed in my face.

Q Who was holding that gun?

A The Defendant.

Q Would you point him out please?

A The man right there with the tie. (Indicating)

Q The man in the white shirt?

A Yes, sir.

Q Could you describe the gun he had?

A It was – and I can recognize – I can remember that gun as clear as yesterday. It was a smaller gun and it looked to be a .38. I do own a .38 myself, so therefore I feel that I can probably say that was a .38, but he did cover it up as well.

Q What color was it?

A It was black, sir.

Q Would you tell His Honor and the Jury what happened then?

A At that point, he basically said – I can't remember word for word at this point. It was basically give me – I want the money, this is a holdup – something like that. He was referring – at that point he was [38] holding me up, that point.

At that point I realized that he seemed to be very calm, very cool, very collected about this thing. I realized that this was, at least in my opinion, this was not something that he was doing for the first time and that he meant business.

I immediately probably reacted pretty quick to this by getting up from my desk and as I'm sitting here and from this side (Indicating) – okay, my desk would be like this (Indicating). I have to turn right to talk to him, okay.

I had to get up and turn my back basically to him for a short period of time to go to a back room that we have. A small little back room where we do keep our money. It's an open area.

As I got up, I went over that way and then there's a little door right here (Indicating) at the far end that people can enter one way or the other. It's a little latch that you just push.

I probably went a little fit faster than he wanted me to because he immediately followed me as fast as he

could around to that little door and at that point we met face to face basically as I was getting to the door to [39] release it and let him in.

He cold cocked me and hit me in the jaw.

Q Hit you with his hands? Hit you with –

A It was his fist. He hit he as hard as he could, with a lot of impact. Did not knock me down and at that point he made a comment and I gave him his money.

Q What was the comment he made?

A The comment he made, this is hard for me to say, so I might fumble around with it a little bit, but I do know word for word. He said, "Give me the fucking money or I'll blow your head off."

Q What did you do then?

A At that point I immediately went to the desk that was near by and I opened up the top draw [sic] where we keep our money. Fortunately, I was violating probably all our company's principles. We usually have the door locked, I had not locked it. I had not made a drop that day, neither one of those. I was able to give him the money with quite ease, without having to do a lot of things.

Q Approximately how much money did you give him?

A It was over $500, sir. A lot of that money was ones, so it looked like a lot more than even $500 at [40] the time.

Q Tell us what happened next.

A At that point, he seemed to be pretty pleased with the take. At least I thought so, because I was – I felt up to this point that the end was near.

He – then at that point, he stopped for a second and it seemed like he was thinking what to do with me. He wasn't sure what he was going to do with me. At least that was my feeling. Once again, that's just my feeling.

Then he said turn around and at that point I had to decide whether I was going to turn around, because I've always said that I could never take a bullet in the back of the head and I wasn't sure what I was going to do.

He put his hand on my shoulder because I was not reacting fast enough, pulled me around where I was facing against him and then at that point he took his gun and hit me as hard as he could across the back of the head.

Q What happened next?

A I just went immediately down to the ground and stayed put until he left.

Q I want to show you these photos, Mr. Crissel,

* * *

[44] occupation.

A Noel Edward Hanrahan, I'm employed with Arlington County Police Department as a homicide and robbery investigator.

Q How long have you been a police officer?

A Been a police officer almost fifteen years, detective for nine, in the homicide and robbery unit for seven.

Q Directing you [sic] attention to August 30th, 1992, did you become involved in the investigation into the shooting of a man named Emmanuel Selassie?

A Yes, sir, I did. I was the lead investigator in the cab driver's shooting and robbery.

Q When did you first become involved in the case?

Approximately ninety minutes after Mr. Selassie had been found. I was notified at home and responded in to the scene.

Q And where did that take place?

A It took place behind the Dolly Madison apartments which is right at the edge of Gleve Road and 24th Road in south Arlington, Virginia.

Q Where is that with relation to 395, Shirley [45] Highway?

A 395 runs parallel to Dolly Madison and then there's a pedestrian tunnel under the highway that leads to National Orthopedic Hospital.

Q Would you tell His Honor and the Jury what you found when you arrived at the scene?

A Once at the scene, behind the rear parking lot of the Dolly Madison towers, it had been secured. Mr. Selassie had been air lifted, medivaced, to Washington Medstar Hospital. There were other police officers and a few other detectives there canvassing for witnesses and starting the crime scene search for evidence.

There was a Silver taxi cab that belonged to Mr. Selassie parked behind this building. The doors were

opened and the interior, specifically the front passenger area was blood spattered and smeared, a very – a good deal of blood spillage there.

Q Investigator Hanrahan, I want to show you these three photographs that are marked Commonwealth's Exhibit Number 3C, 3D and 3E and ask do you recognize those?

[46] (The photographs referred to above were marked Commonwealth's Exhibit Nos. 3C, 3D and 3E, for identification.)

(Mr. Horan handed photographs to the witness for his examination.)

A Yes, sir. Commonwealth's Exhibits 3C, 3D and 3E depict the taxi cab that belongs to Mr. Selassie that was parked here on August 30th, 1992 and the condition of the car as when we found it and these pictures were being taken while I was there.

Q Do they accurately reflect the scene as you saw it on that day?

A Yes, sir, accurately reflect the scene.

Q How about this photograph, Commonwealth's Exhibit Number 3F?

(The photograph referred to above was marked Commonwealth's Exhibit No. 3F, for identification.)

(Mr. Horan handed a photograph to the witness for his examination.)

A Commonwealth's Exhibit Number 3F shows the entrance way to the pedestrian tunnel that would be [47]

leading under 395 in the direction to the National Orthopedic Hospital. The taxi cab pictures of where it was located is approximately fifteen yards from this entrance way.

MR. HORAN: Your Honor, I would offer these into evidence as Commonwealth's Exhibit Numbers 3C through 3F.

THE COURT: All right, give them to the Clerk.

MR. PIOTROWSKI: No objection, Your Honor.

(The photographs heretofore marked Commonwealth's Exhibit Number 3C, 3D, 3E and 3F for identification were received in evidence.)

BY MR. HORAN:

Q Now, on that day did you make any search of the automobile for bullets or anything like that?

A Yes, sir. The crime scene technicians at the scene that day initially looked for signs of shell casings or bullet paths and were unable to locate any evidence at the scene that day.

Q What was done with that vehicle?

The vehicle was impounded and taken by a flat bed truck to the Arlington County Police Property Yard in [48] south Arlington, where it was placed in a secured lot.

Q Investigator Hanrahan, I want to show you these photographs that are marked Commonwealth's Exhibit Numbers 3G and 3H and ask can you identify the man in those photographs?

(The photographs referred to above were marked Commonwealth's Exhibit Nos. 3G and 3H, for identification.)

(Mr. Horan handed photographs to the witness for his examination.)

A Yes, sir. These are photographs of Mr. Emmanuel Selassie as he was on August 30th over at the Washington Medstar Center in Washington, D.C. These were taken within an hour of the shooting.

Q And where is he at the time those pictures are being taken?

A He is in the Medstar Unit, the treatment-trauma center and he's on a hospital gurney.

Q That's a gurney that he's lying on?

A Yes.

Q Did you have a chance to look at the wounds he suffered?

[49] A Initially, no, sir. I could see where they were, but I was not allowed to get close to them and by that time they were adding compresses and doing surgical procedures to stop the bleeding and what have you.

Q The wounds you could see –

MR. PIOTROWSKI: Objection, Your Honor. That's a leading question. The question was that he didn't see them.

THE COURT: The question was leading. Objection is sustained.

MR. HORAN: I have no further questions on this issue, Your Honor. I would offer these as 3G and 3H.

THE COURT: All right, any objections to these?

MR. PIOTROWSKI: Your Honor, I would object to their admission at this time, subject to connection with the Defendant.

THE COURT: Objection is overruled.

(The photographs heretofore marked Commonwealth's Exhibit Nos. 3G and 3H for identification were received in evidence.)

[50] BY MR. HORAN:

Q Now, how long, if you know, did Mr. Selassie remain in the hospital?

A Approximately twenty days. He was ICU for over – about seven or eight of those days and then switched to the Ear, Nose and Throat Unit because of the massive damage on the inside of his jaw area.

MR. PIOTROWSKI: Objection, Your Honor. He's stating the reasons that are medical reasons and not within his knowledge.

THE COURT: Objection is sustained.

BY MR. HORAN:

Q Did there come a time when you conducted another search of the automobile?

A Yes, sir. I was not able to communicate with Mr. Selassie until – thoroughly until September 16th. I had visited him three times in the hospital –

MR. PIOTROWSKI: Your Honor, I'm going to object. The question was – it's non responsive and pertaining to the vehicle.

THE COURT: Objection is sustained.

BY MR. HORAN:

Q Did there come a time when you searched the [51] vehicle?

A Yes, sir, on September 16th of '92.

Q Is there some reason you didn't search it until then?

A Yes, sir.

Q And what was that?

A I did not have as clear an understanding of the events that took place that day.

Q And what finally gave you a clear understanding of the events?

A I had an interview with Mr. Selassie at the hospital where he was able to –

MR. PIOTROWSKI: Objection as to what he did, Your Honor.

MR. HORAN: I don't want what he said.

MR. PIOTROWSKI: What he said, excuse me.

BY MR. HORAN:

Q I don't want what he said.

A Mr. Selassie told me how he was sitted – seated behind he [sic] steering wheel and was facing towards the

window when he was shot in the head and I went back to the car to check out a different angle of perception that I had at that time and I recovered a bullet from under the [52] seat of the taxi cab in the rear.

Q I want to show you these that are marked 3I, 3J and 3K and ask you would you tell us what those photographs represent?

(The photographs referred to above were marked Commonwealth's Exhibit Nos. 3I, 3J and 3K, for identification.)

(Mr. Horan handed photographs to the witness for his examination.)

A Okay, Commonwealth's Exhibit 3I depicts the Silver Cab number 16, which is Mr. Selassie's vehicle, which is parked inside a fenced lot compound at the Arlington County Police Property area.

Commonwealth's Exhibits 3K depicts the rear seat area passenger side of the taxi cab. I had pulled out the bottom seat bench of the seat to inspect underneath it and Commonwealth's Exhibits Number 3J depicts a spent bullet that I found underneath the seat and it appeared to be a .9 millimeter caliber.

Q How about 3L?

[53] (The photograph referred to above was marked Commonwealth's Exhibit No. 3L, for identification.)

(Mr. Horan handed a photograph to the witness for his examination.)

A 3L, Commonwealth's Exhibit 3L is a close up to scale of the same bullet with the police agent's ruler adjacent to it.

MR. HORAN: Your Honor, I would offer these photographs into evidence as Commonwealth's 3I through 3L.

MR. PIOTROWSKI: May I examine those, Mr. Horan?

(Mr. Horan handed photographs to Mr. Piotrowski for his examination.)

MR. HORAN: Your Honor, I would offer those as Commonwealths 3I through 3L.

MR. PIOTROWSKI: No objection, Your Honor.

THE COURT: All right.

(The photographs heretofore marked Commonwealth's Exhibit Nos. 3I, 3J, 3K and 3L for identification were received in evidence.)

[54] BY MR. HORAN:

Q Investigator Hanrahan, did you thoroughly search that car at that time?

A Yes, sir. I climbed inside of it myself and I shook and I pulled out and I was determined to search as much of that vehicle as I could find.

Q Have you ever found any other bullets in connection with the shooting of Mr. Selassie?

A No, sir. There was no other indication of more than one shot being fired and there was no shell casing found at the scene.

Q Were any other bullets found in the automobile other than that one?

A No, sir, that was the only one.

Q What was done with that bullet once you found it? The one shown in 3L?

A It was collected by Agent Sarafinas, turned into the police property section. I then signed it out shortly thereafterwards and took it out to the Northern Virginia Forensic Lab in Fairfax and turned it over for ballistic comparison.

Q Who did you give it to?

A To Jay Mason.

[55] Q Is Jay Mason a ballistics examiner?

A Yes, sir.

MR. HORAN: I have no further questions, Your Honor.

THE COURT: Mr. Piotrowski?

MR. PIOTROWSKI: No questions of this witness, Your Honor.

THE COURT: Thank you, Mr. Hanrahan. You may step down, sir.

(Witness stood aside.)

MR. HORAN: Officer Sarafinas please.

Whereupon

OFFICER JOHN C. SARAFINAS

a witness, was called for examination by counsel on behalf of the Commonwealth and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HORAN:

Q State your full name please and your occupation.

A John C. Sarafinas, police officer, Arlington County, Virginia.

Q How long have you been a police officer?

[56] A Next month will be twenty three years.

Q What are your present duties with the Arlington County Police Department?

A I'm a master police officer, senior crime scene analyst.

Q Did there come a time when you examined a Silver Cab in the police lot in Arlington County?

A Yes, sir.

Q I'm going to show you this photograph that's marked Commonwealth's Exhibit Number 3I and ask you if you can identify that vehicle?

(Mr. Horan handed a photograph to the Witness for his examination.)

A Yes, Silver Cab Number 16, Detective Hanrahan called me down to the police impound lot September 16th, 1992.

Q Did you remove anything from that cab?

A I did.

Q What was that?

A A copper jacketed bullet.

Q I'm going to show you this photograph marked 3L in evidence and ask if you recognize that?

(Mr. Horan handed a photograph to the witness [57] for his examination.)

A Yes, sir, I do.

Q Did you in fact remove that from the vehicle?

A Yes, sir, I did.

Q Have you got it with you today?

A I do.

Q Would you show it to us please?

(The witness handed a container to Mr. Horan for his examination.)

What did you do with this bullet after you removed it from the vehicle?

A Once I recovered it from the cab I packaged it as it is right now and turned it into the property section of the Arlington Police Department.

Q What is the property section of the Police Department?

A That's where we store all our evidence.

Q Is that in a secure area of the Police Department?

A Yes, it is, it's alarmed, locked and it's located in the basement of the Police Department.

MR. HORAN: Your Honor, I would offer this into evidence as Commonwealth's Exhibit Number 3M.

(The container referred to above was marked Commonwealth's Exhibit No. 3M, for identification.)

THE COURT: All right.

(The container heretofore marked Commonwealth's Exhibit No. 3M for identification was received in evidence.)

MR. HORAN: I have no further questions, Your Honor.

THE COURT: Questions?

MR. PIOTROWSKI: No questions of this witness, Your Honor.

THE COURT: All right, thank you Mr. Sarafinas. You may step down.

(Witness stood aside.)

MR. HORAN: Your Honor, I wondered, could those photographs be published to the Jury at this time?

MR. PIOTROWSKI: Your Honor, I'd object to publication at this time. I still don't think there's been a connection made.

THE COURT: Let me be sure which ones you're referring to please, Mr. Horan? You're referring to all [59] of them that have been entered?

MR. HORAN: Yes, Your Honor.

THE COURT: And You're objecting to them?

MR. PIOTROWSKI: Yes, Your Honor. Not all the pictures have been shown to be connected to the Defendant at this point in the proceedings.

I do not believe there's been a foundation laid for any of the pictures beyond the 2s.

MR. HORAN: Your Honor, let me call the next witness.

THE COURT: I was going to say, I think Commonwealth's Exhibits 3A and 3B can be published to the Jury at this time.

(Whereupon, Commonwealth's Exhibits Number 3A and 3B were published to the Jury.)

MR. HORAN: Your Honor, I would call Shane Singh.

[60] Whereupon

SHANE KEVIN SINGH

a witness, was called for examination by counsel on behalf of the Commonwealth and after having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HORAN:

Q State your full name please for the record.

A Shane Kevin Singh.

Q Mr. Singh, keep your voice up so that the Jurors can hear you, would you please.

Directing your attention to the early evening hours of August 30th, 1992, did you have occasion to be in Arlington with Eddie O'Connor and the Defendant, Bobbie Lee Ramdass?

A Yeah.

Q Was there anyone else with you?

A Theo, I don't know he last –

Q Who is Theo?

A A friend. I don't know his last name.

Q What was the reason for your going there?

A To rob a hotel.

Q What hotel were you going to rob?

[61] A I don't know the name of it.

Q When you got there where did you go?

A We parked on the street and went through a tunnel, some sort of tunnel. Came out in a parking lot. I guess the parking lot was behind the hotel, I'm not sure. On our way to the hotel we saw the cab driver sitting in the parking lot and decided to rob the cab driver.

Q Where any of you armed?

A Yeah.

Q Who was armed?

A Bobbie Ramdass.

Q What kind of weapon?

A A .38.

Q The same .38 that you testified about the other day?

A Yes.

Q Tell His Honor and the Jury what happened.

A We went back to rob the guy, me and Bob went to the passenger side. Eddie O'Connor – both me and Bob went to the driver side. Eddie O'Connor went to the passenger side and got in.

I told the cab driver to give us the money. [62] He gave us the money. After he gave us the money, Bob said that wasn't all the money and he clicked the gun, pulled the trigger and it didn't go off. Pulled it again and it went off.

Q Did you see where he shot him?

A In the neck.

Q What did you do then?

A I ran. Ran back through the tunnel.

Q How much money did he get?

A Maybe $50.00.

Q All totalled?

A Yes.

Q Did you see what happened to the cab driver after he shot him?

A Like I ran, I didn't see it.

Q You ever ask Bobbie why he shot him?

A No, I didn't.

Q Did you even care?

A Yeah, I –

MR. PIOTROWSKI: I'm going to object, Your Honor. That's a characterization of the Defendant's feelings.

THE COURT: You're asking whether he cared?

[63] MR. HORAN: I asked him if he cared.

THE COURT: A pretty simple question. Yes or no.

THE WITNESS: Yeah. I was scared. I didn't know, I didn't – I didn't ask him.

MR. HORAN: I have no further questions, Your Honor.

THE COURT: Mr. Piotrowski?

CROSS-EXAMINATION

BY MR. PIOTROWSKI:

Q Mr. Singh, how many weapons were there that day?

A Just one.

Q Which one was that?

A A .38.

Q Where was the gold platted [sic] gun?

A I don't know where it was.

Q Had you been drinking that day?

A I don't think so, might have.

Q Been smoking that day?

A I don't think so.

Q No bloods?

A I don't think.

* * *

[70] Whereupon

EMMANUEL SELASSIE

a witness, was called for examination by counsel on behalf of the Commonwealth and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HORAN:

Q State your full name please?

A Emmanuel G. Selassie.

Q Mr. Selassie, you're going to have to move right up in your seat, because all these people over here have to hear you, so keep your voice up; would you please?

(The witness complied with the request.)

Would you tell us your full name?

A Emmanuel Gilbert Selassie. Emmanuel G. Selassie.

Q How old you are?

A I'm forty one now.

Q Where were you born?

A Ethiopia.

Q How long have you lived in this country?

A Close to twenty two years.

Q Directing your attention to August 30th of [71] 1992, where were you living at that time?

A At Dolly Madison apartments.

Q Where is that located?

A It's 2300 South 24th Road, Arlington, Virginia.

Q Did you have a job at that time?

A Yes.

Q What was your occupation?

A I drive a taxi.

Q For how long have you been driving a cab?

A Over fifteen years.

Q And did you drive a cab that day?

A Yes, I did.

Q Did there come a time when you went home?

A Yes, I came home from work.

Q About what time was that?

A About – approximately about 5:00 or a little after 5:00.

Q Would you tell us where you went when you got home?

A I went to the parking lot in the back of the building.

Q Where is that parking lot with relation to [72] 395?

A If you come from Washington, you make a right on Glebe Road and you take 24th Road and you go straight all the way down and when the street ends you make a right and you go around the building. There's just like a fenced area over there and there are parking lots.

Q Can you see 395 from the parking lot?

A Yeah, you can see it from the top, yeah.

Q Can you get to the other side of 395 without going back on the roads?

A In your car, no.

Q No, I'm talking about walking?

A Walking, yes, because they have a gate – a little door I mean in the fence. I never walked through it but people come in and out.

Q Is there a tunnel around there?

A They say there is.

Q You've never been in the tunnel?

A I've never been in the tunnel.

Q Now tell us what happened when you parked your car?

A I came from work and parked the car and I was going to close my door and I was stretching to hit it and [73] close it and three guys run to me and one of them came up my side, two of them stayed here (Indicating) and they started opening the door and when I turn around the other guy had a gun right here. (Indicating)

Q What guy had the gun?

A I don't know, one of them had it.

Q Where was he with relation to you, the guy with the gun?

A Right next to me.

Q Now are you in the driver's seat or the passenger seat?

A Driver's seat.

Q And as you were sitting in the driver's seat, was he or you right or on your left?

A On this side, on the left side. (Indicating)

Q Is he inside or outside the car?

A Who, he?

Q Yes, the man with the gun?

A I didn't see the man with the gun because he put the gun right on me so I couldn't turn.

Q So you couldn't see him?

A I couldn't see him. When I turned around I saw the gun and he told me – he asked me for money.

[74] Q He asked you for money?

A yeah, he says to me give me your money, give me your money.

Q So what did you do?

A When I hear that then I said – when I saw the gun I was shocked and I said take it easy, pal. I'll give you the money. I took my money out and just passed it. He had the gun close to me and he took the money and I just waited that he would go.

I thought he would go, but the other guys walked out and run, and I said this is the last money, this is all the money I have and that's it, that's what I said and then he shot me.

Q Where did he shoot you?

A Right here. (Indicating)

Q Prior to that did you have any scars at all?

A No scars, no scars, no.

Q And do you have scars on your face now?

A Yes, I have scars here (Indicating) and I take this over here. (indicating)

Q After he shot you, do you remember what happened next?

A Nothing, complete, never discover.

[75] Q How many days is it before you know anything?

A Almost two weeks.

Q Where were you when you –

A When I was in the hospital, I didn't even know if I was in the hospital, you know. When I open my eyes the first time, I thought I was somewhere else. I couldn't understand where I was.

Q Where were you?

A Actually, I was in the hospital.

Q How long did you stay in the hospital all together?

A I think about nineteen days, nineteen or twenty.

MR. HORAN: I have no further questions, Your Honor.

THE COURT: Cross examine?

MR. PIOTROWSKI: I have no questions of this witness, Your Honor.

THE COURT: Thank you, Mr. Selassie, you may step down please.

(Witness stood aside.)

MR. HORAN: Your Honor, I would ask that these pictures now be published to the Jury.

* * *

[85] Q And in what office do you work?

A Fairfax County.

Q Do you know the Defendant, Bobbie Lee Ramdass?

A Yes, sir, I do.

Q Has he been a parolee of yours?

A Yes, sir.

Q Do you know when was the last time he was paroled?

A He was released on mandatory parole on –

MR. PIOTROWSKI: Your Honor, non responsive. He's not answering the question, he's [sic] was looking for an answer.

THE WITNESS: On May 21st, 1992.

THE COURT: There's an objection. The objection's overruled.

BY MR. HORAN:

Q May 21st, 1992?

A Yes, sir.

Q And to which office as he paroled?

A He was paroled to the Fairfax County office.

Q Did there come a time when you discussed his parole with him?

A Yes, I did. I met with him on August 12th. [86] He was reassigned to me from another officer, Carolyn Hook.

Q Is there some reason he was reassigned from Carolyn Hook to you?

A She had resigned from her office.

Q As of September of 1992, was he still in the parole status?

A Yes, sir.

Q And through the month of August?

A Yes, sir.

MR. HORAN: I have no further questions, Your Honor.

MR. PIOTROWSKI: No, questions, Your Honor.

THE COURT: Thank you, Mr. Preston.

(Witness stood aside.)

MR. HORAN: Your Honor, please, that's the Commonwealth's evidence.

THE COURT: Let's take a recess at this time, ladies and gentlemen.

(Brief recess.)

MR. PIOTROWSKI: Your Honor, I asked when you commenced that I could present a motion to you at this time.

* * *

[91] you for it and I ask you to keep it up at this point.

There's a lot of evidence to go. There's a lot of things yet to be resolved.

The evidence that we're about to present will show you that Bobbie Lee Ramdass is now twenty one years old. He turned twenty one in October of 1992. He was twenty at the time that he committed this offense. He was fifteen when he first had his encounters with the Juvenile Court that you heard about earlier this morning.

He's impulsive, a high energy level, is associated with antisocial groups. He focuses on maintaining peer and family acceptance. Those are his goals in life. Loyalty may be his strongest trait. Loyalty to his family and his peers.

He was born and raised in what modern terms can be described as an unbelievably dysfunctional family. He has been violently abused by others and obviously he has abused others.

Although an unbelievable dysfunctional family, in modern terminology, historically he could be considered one of Fagan's children from Dicken's [sic] London. That's what our evidence will show.

His school history is erratic, minimal, [92] although it covers a period of years. He got to the seventh grade actually. He was physically moved into the tenth and then just sort of quit.

The evidence will indicate that he went to school. He then took the recess bus to another school. When he got to school he went to the one class before the recess bus came. He just didn't go there on.

Subsequently, he left school, road [sic] around to the other schools. Obviously associated with peers that got him into trouble. During that period of time he experimented with PCP, cocaine and marijuana.

In his relatively young life, he preferred PCP as his drug of choice. Obviously the drug of his peers. As he grew older he came down to marijuana and alcohol. Again, the choices of his peers.

Since the age of thirteen, thirteen to twenty one, he has been involved with the Juvenile court and in incarceration for approximately seven out of that twenty one years.

The evidence will show why, even if you find that Bobbie Lee Ramdass probably will commit future crimes of violence, he should not be executed. It will show you that he will serve, right now before you impose a [93] sentence, the next ninety nine years of his life in jail for the sentences that have been imposed.

It will show you that he is pending trial in Alexandria for the Fort Bragg apartment incident, robbery, for which as you've seen from all the other charges, will have

him facing at least one life sentence and another four years.

He has yet to be sentenced in the Domino Pizza robbery in Alexandria, of which he has been convicted. At least another life sentence.

Bobbie Lee Ramdass will never be out of jail. Your sentence today will insure that if he lives to be a hundred and twenty two, he will spend the rest of his life in prison.

But it doesn't end there. Bobbie still has to be punished for the alleged crimes that you heard about today. The shooting, violation of parole, and if these crimes are proven beyond a reasonable doubt in a Court of law, he will also be punished for them.

Your purpose here today is not to punish him for those crimes. You can't punish him for those crimes. That evidence is permissible in a very unique situation.

He hasn't been tried. He hasn't been found

* * *

[100] be physically difficult and he believed it right up until the death, until the death of Mr. Kayani.

But his [sic] is going to tell you that he didn't intend to kill Mr. Kayani. That he shot that weapon. That it went off. He did not intend to kill him. That the robbery was going on. The robbery was going on like it should. The guy was handing him the money and he shot it, the weapon.

And he's going to go back and remember some of the other pleasant experiences of his life. He'll tell you the

first thing he remembers from school is that he climbed in a sink and he got suspended for washing off his shoes in that sink.

We're going to show you the records, the evidence of where he came from, what he is. We're going to show you evidence because of his acts, because of his attitude, because of his thinking, he should be locked up. He should be locked up for the rest of his life.

We're going to show you evidence that nobody wants to die. He doesn't want to die. That he is ready to accept being locked up for the rest of his life and that he should be locked up for the rest of his life because he has dreams, he has ideas, he has hopes.

* * *

[124] Q During the course of your investigation, were you able to discover anything about Bobbie Lee's father? That's page 5.

MR. HORAN: Your Honor, I object to that, she never talked to Bobbie Lee's father, so it would necessarily be based on hearsay.

MR. ARIF: Your Honor, I'm asking if she found out – discovered anything about him. If she ever spoke with him, anything. Any information that she may have gathered from any sources and I think that is probative.

THE COURT: You already asked her which or how many family members that she spoke with and she said his mother. So, are you asking for hearsay information?

MR. ARIF: Your Honor, I'm asking if she discovered anything – let me rephrase the question.

BY MR. ARIF:

Q Did you speak with Mr. Ramdass?

A Bobbie's father?

Q Bobbie's father.

A No, I did not.

Q Did you attempt to discover where he was?

A No, I did not.

Q Is there a reason that you did not attempt to [125] discover where he was?

A I was advised that his whereabouts were unknown.

Q Do you know or had it ever been reported – do you know of your own knowledge whether Mr. Ramdass senior was AWOL from the Army?

A That was the information I had received.

Q Did you ever discuss with Bobbie or Mrs. Ramdass as to when the last time Bobbie had seen his father? I don't think that's in the report, ma'am.

A I don't recall.

MR. ARIF: If I may have a moment, Your Honor.

(Defense counsels confer.)

Thank you, Ms. Joffe, nothing further. If you'll just answer Mr. Horan's questions.

* * *

[130] A I don't recall.

Q Eventually, he was sent to South Hampton in July of 1988, after your recommendation?

A That's correct.

Q Judge Jamborsky followed your recommendation in that regard?

A Yes.

Q And gave him seven years at South Hampton?

A Yes.

Q Was he ultimately paroled?

A Yes, he was.

Q Where was he paroled from?

A I don't know.

Q Was it discretionary parole or mandatory parole?

A Mandatory parole.

Q What is the difference between discretionary parole and mandatory parole?

A Discretionary parole means the parole board has – essentially a person has served less time of their full sentence and is given parole or returned to the community to be released on supervision.

When a person is released on mandatory parole, [131] essentially they have served their sentence within the confines of the institution and in which case they will only be on supervision for a period of six months,

Q He was paroled in the middle of May of 1992?

A Yes.

Q Did he come back to your office at that time?

A Yes.

Q Did you deal with him at all at that time when he came back?

A No, I did not.

Q Some other officer was assigned to those duties?

A That's correct.

Q So you haven't talked to him at all since he's been out on parole?

A No.

MR. HORAN: Thank you, Ms. Joffe.

THE COURT: Any other questions, Mr. Arif?

MR. ARIF: Nothing.

THE COURT: Thank you, Ms. Joffe, you may step down, please.

(Witness stood aside.)

MR. PIOTROWSKI: Bailiff, would you ask for

• • •

[180] (Whereupon, at approximately 12:42 o'clock p.m., the hearing of this matter was recessed to reconvene at 2:00 o'clock p.m.)

• • •

AFTERNOON SESSION

(The Court reconvened at approximately 2:00 o'clock p.m.)

(The Defendant retook the stand.)

(Whereupon, at approximately 2:02 o'clock p.m., the Jury returned to the Courtroom and resumed their seats in the Jury Box.)

THE COURT: Mr. Horan?

CROSS-EXAMINATION

BY MR. HORAN:

Q Mr. Ramdass, as I understood your testimony this morning, on August 25, you participated in the robbery of the Pizza Hut?

[181] A Yes.

Q You were one of the gunmen in that robbery?

A Yes.

Q And in the course of that robbery you were using the same .38 revolver you used to kill Mr. Kayani?

A Yes.

Q In the course of that robbery you hit one of the clerks in the head with that gun; didn't you?

A No. He said I did but I didn't.

Q Pardon?

A He said I did but I didn't.

Q You didn't hit anybody?

A No, sir.

Q What did you do in the course of that robbery?

A I was in front of the counter and told the customers to lay down and watched everything with the gun like on the customers. The lady waitress came by and I told her to get down on the ground and she sat down on a chair though.

Q How much money did you get from that robbery?

A I don't know, I don't know the total. I don't remember.

[182] Q That was on the 25th of August?

A Yes.

Q Then on the afternoon of the 29th of August, you did the robbery of the Bragg Towers Hotel?

A Yes, I think that was the date, yes.

Q That man that testified in here this morning was the man you robbed in that robbery?

A Yes.

Q Who did that robbery with you?

A I don't want to say his name.

Q Why don't you just say his name anyway?

A You mean who did it with me?

Q Yeah.

A That's like me telling on him.

Q What don't you tell on him?

A He was my friend, I guess. Even though he testified against me, I'm not going to tell on him.

Q But there's another man that did the robbery with you?

A Yes.

Q Did he have a gun?

A No.

Q You were the gunman in that robbery?

[183] A Yes.

Q And you robbed Mr. Crissel, the man who testified here this morning?

A Is that the cab driver?

Q No.

A Is that the man who –

Q No, in the Bragg Towers.

A Oh, yes.

Q And it was Mr. Crissel who was on the witness stand here. He was the one you actually put the gun on?

A Yes.

Q And he went in the back room to get the money for you?

A Yes.

Q Is that right?

A Yes.

Q How much money did he give you altogether?

A I don't remember the total. I don't remember how much.

Q $400, $500, something like that?

A Something like that.

Q And then you hit him in the head with the gun?

A Yes.

[184] Q Now, he had given you the money?

A Yes.

Q He didn't threaten you?

A No, sir.

Q He didn't try to fight you?

A No, he didn't.

Q He was willing to turn it over?

A Yes.

Q And he did?

A Yes.

Q And then you hit him in head with the gun?

A Yes.

Q Why'd you do that?

A Because I told him – I was telling him to turn around and get him on the ground so we could leave. He hesitated, so I hit him and then I left.

Q Knocked him down; didn't you?

A Yes.

Q On that next night, August 30th, you did a robbery of the Domino's Pizza over in Alexandria?

A Yes.

Q And that's the robbery you were tried by the Jury on over there?

[185] A Yes.

Q What time of night did you do that robbery?

A I don't remember the exact time. It was night time.

Q It was late night?

A I think so.

Q Were you the gunman in that robbery?

A Yes.

Q And you actually went in and put the gun on the clerk in that store?

A Yes, from the front of the counter.

Q And he gave you the money?

A Yes.

Q Now you've testified in your trial over there under oath; didn't you?

A Yes.

Q And in the course of that trial, didn't you testify under oath that you didn't do it?

A Yes.

Q So you lied under oath?

A Yes.

Q And that one would have been the night of August 30th. That was not long after you shot the cab [186] driver in the head?

A I don't know the dates.

Q Well, if the cab driver was shot in the head on August 30th and Domino's Pizza was August 30th, you did them both the same day; didn't you?

A I think so if that's what it was, what you say, that's what it says.

Q Well, the fact of the matter is, Ramdass, you did – Mr. Ramdass, you did so many, it's hard to keep them all straight; isn't it?

A I know everything I've done, I've been in Court for.

Q Not everything?

A Yes, as far as robbing.

Q As far as robbery.

On the 7-11 on September 2nd, you testified this morning that Wilson went in first and put the gun on the customers?

A Yes.

Q He had the gold gun?

A Yes.

Q And you went in second and it was your job to get the clerk?

* * *

[200] A No, it was a moped.

Q A moped?

A Yes.

Q You got charged with that?

A Yes.

Q And you also got charged with breaking in some place?

A Yes.

Q What kind of place did you break in?

A A house.

Q What were you stealing in the house?

A A friend, me and my friend, we wanted to get the VCR and I think stereo.

Q As a result of all of that, they finally sent you away to the State. Convicted you and sent you to the State?

A Yes.

Q And you stayed in the State until they paroled you in September of 1986?

A I believe so.

Q You went down there in January of '86 and in September of '86 you were in Hanover, in Beaumont and then they let you out?

[201] A I think I got out before then, in between that time.

Q But you finally got paroled as a juvenile in '86, in September and then you got violated on parole in November?

A I believe so.

Q What did you get violated for?

A Can't remember.

Q Well, in any event, they sent you back to the State again?

A I believe so.

Q And then in November of '87 they released you on a thirty day visit to your home?

A Yes.

Q And that was out of Beaumont?

A Yes.

Q Still a juvenile facility; right?

A Yes.

Q And they released you on a thirty day visit and you never went back to Beaumont?

A That's right.

Q After thirty days you were an escapee?

A Yes.

[202] Q And you remained an escapee up until you got arrested for robbing Mr. Thompson?

A Yes.

Q The robbery of Mr. Thompson took place in February of '88 and for that robbery you got sentenced in July of '88 to South Hampton?

A Yes.

Q You went to South Hampton in July of '88 and didn't come out until May of '92?

A Yes.

Q When they mandatorily released you on parole in May of '92?

A Yes.

Q You went back to live with your mother –

A Yes.

Q – in May of '92?

A Yes.

Q How long after you got out did you get your first gun?

A I think it was right before – like right after July 4th.

Q Right after the 4th of July?

A Yes.

[203] Q And at that time you were carrying a tec 9; weren't you?

A Yes.

Q And that was tec 9 you got from Bobby Lock?

A No.

Q You didn't get that from Bobby?

A No.

Q Well, it was a tec 9?

A Yes. His name is Robby Lock

Q Pardon?

A His name is Robby Lock.

Q Robert Lock?

A Yes.

Q Is that who you got the tec 9 from?

A No.

Q But that tec 9 you carried for a couple of weeks in July?

A Yes, I believe so.

Q And on July 15th you went over into Old Town Alexandria with Julius Clark and Eddie O'Connor and Theo Sharp; isn't that right?

A In Old Town?

Q You went over to the Bird in Alexandria?

[204] A I don't think so.

Q Did you go over there early one morning looking for a guy named Dwight – Darrell Ferguson?

A I don't know no Darrell Ferguson.

Q A drug dealer?

A I don't know him.

Q Hangs out in Alexandria and hangs out on Number 1 Highway?

A I don't know. I don't know him.

Q Didn't you shoot a guy in Alexandria on July 15th, 1992?

A No.

Q With that tec 9?

A No, sir.

Q Wasn't Theo with you?

A No, sir. I don't know what you're talking about.

Q Pardon?

A I don't understand. I don't know what you're talking about.

Q You didn't doing [sic] any shootings in Alexandria that you know of?

A No, sir.

* * *

[216] MR. PIOTROWSKI: Peggy Ramdess.

Whereupon

PEGGY ANN RAMDASS

a witness, was called for examination by counsel on behalf of the Defendant and after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SOLOWAY:

Q Please state your name for the Court?

A Peggy Ann Ramdass.

Q Mrs. Ramdass, do you have any children?

A Two.

Q And their names?

A Bobbie and Mark Ramdass.

Q And who is older?

A Bobbie.

Q How much older is he?

A A year.

Q Do you have any brothers and sisters?

A There's twenty one of us.

Q There's twenty one of you?

A Yes.

Q Are you originally from around here?

[217] A Born in D.C.

Q You were born in D.C.?

A (Nodding head.)

Q When did you leave home?

A I left many a time. I ran away –

Q You ran away.

A – thirteen, fourteen, fifteen.

Q And why were you running away?

MR. HORAN: Your Honor, I object on the grounds of relevance. I mean we aren't trying Mrs. Ramdass here I don't think.

THE COURT: Why was she running way [sic]?

MS. SOLOWAY: Yes, Your Honor.

THE COURT: When she was thirteen? Objection is sustained.

BY MS. SOLOWAY:

Q Mrs. Ramdass, were you sexually abused?

A When I was younger, yes.

Q When did you leave home for good?

A When I was nineteen.

Q And why?

MR. HORAN: Your Honor, I object on the grounds of relevance.

[218] MS. SOLOWAY: Your Honor –

THE COURT: Excuse me. Mrs. Ramdass, if you'd be kind enough to pull your chair right up and speak into the microphone so these ladies and gentlemen over here can hear you as well.

All right, what was your question?

MS. SOLOWAY: I asked her why she left home.

THE COURT: And you're objecting to that?

MR. HORAN: On the grounds of relevance, Your Honor

MS. SOLOWAY: Your Honor, the relevance of this will be shown.

THE COURT: Ms. Soloway, I don't know whether – when she left home, whether your client had even been born and the objection is sustained.

BY MS. SOLOWAY:

Q Who is Bobbie's father?

A Mr. Chandradath Ramdass.

Q How do you know that?

A Because we got married and that's what was on the marriage certificate.

Q Were there ever paternity tests done to show that?

A [219] No.

Q How old were you when you had Bobbie?

A Twenty two – twenty one.

Q Were you working at the time?

A Yes.

Q What were you doing?

A I was a topless dancer at a night club.

Q How long did you do that for?

A About two years.

Q Two years till Bobbie was born and you went back or you stopped for a while?

A (Nodding head.)

Q You were married to Mr. Ramdass during this time period?

A No.

Q Were you married to him later?

A I married him when I found out I was pregnant, eight months we got married.

Q Did Mr. Ramdass have any relationship with Bobbie?

A Not really, no. He never believed Bobbie was his son.

Q Did he ever do anything to harm Bobbie?

[220] A He would beat him with a belt constantly when he, you know, when I wasn't there mostly.

Q How about your other son?

A Mark? No, he adored Mark.

Q He never did anything to hurt Mark?

A No, nothing.

Q Mrs. Ramdass, have your parents ever met Bobbie?

A Yes.

Q When he was little what was their reaction to him?

A My father would always say here come the niger lovers. Every time we would come he would say that, even to my sons.

Q Were your sons old enough to understand it?

A Yes.

Q What do you do for a living now?

A I'm a assistant housekeeper at the Comfort Inn on Richmond Highway.

Q Have you held a lot of jobs in the past?

A Not many.

Q Not many? How did you get by?

A Many things I used to do.

[221] Q Such as?

A Steal and write bad checks and when my husband left me, we stayed in a storage bin and we didn't have no where to live, you know when they had like free food samples and stuff?

Q Yes.

A We went around and took those to eat until I could get food from social services.

Q Did you ever pretend you were collecting money for charity?

A Not me, no but Bobbie and Mark did.

Q Did you ever take the children with you when you went to steal things?

A Grocery store, yes.

Q What did you do?

A I would stand them up in the basket and I would have my bag right there and I would stuff it up with food and then just walk out the store.

Q How old were the kids at this time?

A Maybe six, seven.

Q You said you lived in a storage bin. What do you mean by a storage bin?

A Well, see I used to live in Shirley Duke, [222] right on Duke Street and they had stuff where you stored your furniture and we stayed in there for forty five days.

Q What time of year was this?

A During the summer time I think. We did have a neighbor upstairs that would let us bathe.

Q When you went to work, who took care of Bobbie and his brother?

A Well, when I started back to work, then I would leave them with different people and then afterwards – no one permanently.

Q Did there ever come a time when Bobbie was in charge of his brother?

A Yes, he grew up before his time, yes. I know this. I had to have him to watch him constantly because my

husband was student and I had tried to go back to get my GED and everything.

Q So Bobbie was watching Mark?

A Yes.

Q How old was Bobbie at that time?

A He was young, seven, eight, nine.

Q Did he take care of Mark?

A He always watched Mark. He was very jealous of Mark, as I said, very jealous.

[223] Q Did he protect Mark?

A Always.

Q How did he do that?

A He would stay right there with him. He wouldn't leave him.

Q Did he get into fights for him?

A This I didn't see.

Q Do you know if Bobbie taught his brother anything or did he just watch him?

A He just watch him.

Q What did you teach Bobbie?

A I taught Bobbie many things. How to survive out here, how to protect his self.

Q How did you teach him to protect himself?

A I taught him how to fight, like my brothers did me.

Q And what did that consist of? Did you get into sparing [sic] matches with him? What did you do?

A I stand him up like a boxer and fight, actually fight. Just like my brothers did me to teach me how to defend myself.

Q Did you teach him when to fight?

A When – when – when anyone that would harm [224] him or hit him first. This is the first rule that my father taught me.

Q When anyone hit your [sic] first?

A Yeah, then you had the legal right to hit back because you're defending.

Q Right away?

A Yeah, the first punch.

Q Is it okay to come back later and hit somebody after they've hit you?

A You mean if they still hitting you?

Q They're hitting and they get away. Is it okay to go after them?

A Normally when I hit someone they don't come back up.

Q You said you were involved in some criminal activity, writing some bad checks and shoplifting to survive.

Have you ever been convicted of a crime?

A Just three.

Q And what were they?

A Two battery and assaults and one cashier check.

Q A bad check charge?

[225] A (Nodding head.)

Q Uttering?

A That was a felony.

Q Did you ever go to jail?

A No. I was put away for one year.

Q You were put away where?

A Reform school.

Q You were in reform school when you were a child?

A I was seventeen.

Q Was this before Bobbie was born?

A (Nodding head.)

Q Why were you put away in a reform school for?

MR. HORAN: Your Honor, I object on the grounds of relevance.

MS. SOLOWAY: I think this goes to show –

MR. HORAN: She's not being tried.

THE COURT: What were you going to say?

MS. SOLOWAY: This goes into the whole upbringing-background of Bobbie. It shows where the family is coming from.

THE COURT: But he hadn't been born at that time, Ms. Soloway. Objection is sustained.

[226] BY MS. SOLOWAY:

Q Mrs. Ramdass, did you ever lose custody of your children?

A Twice. The County took them twice.

Q Why?

A One time I was in Court for an eviction and I had left Bobbie and Mark home, Bobbie to watch Mark and while I was in Court the Sheriff had came and put everything out on the sidewalk and when I got home there was note that the County had took my sons.

Q How long did they have your children?

A About two weeks.

Q How old were your children at that time?

A They were young, maybe nine, ten.

Q Bobbie was eight or nine? That would have made Mark –

A Six or seven.

Q And the second time?

A The second time I lost everything I had. I got evicted and I was here in Alexandria and the worker talked to me into giving up my sons before they would take them from me.

Q How long was that for?

[227] A They kept them for about a year.

Q For a year?

A Yeah.

Q Were you able to visit them or anything?

A I had visitation rights on them. They would bring them to me. I could never go there to the foster parents. They would bring them to me on my day off, but they didn't stay.

Q They didn't?

A I'd spend a couple of hours, that's all.

Q That's all you were allowed?

A Uh-huh.

Q Who's Mr. Sanchez?

A The next boyfriend.

Q How old were the kids?

A At that time I'd say about eight and nine.

Q He was your boyfriend for how long?

A About two years.

Q Did he ever abuse you?

A Yes, all the time.

Q Did the children see this or –

A Yes, they tried to – Bobbie tried to break it up most of the time.

[228] Q Did he ever abuse the children?

A Yes, many a time.

Q What did that consist of?

A He would lock Bobbie in the closet. He would beat him with a belt buckle. He would hold Mark – his little legs – on the fifteenth floor, I lived on the fifteenth floor, out the window attempting to drop him.

I just couldn't take it any more. I ended up attacking him and putting him in – police and everything came about four or five times.

Q How did you attack him?

A I don't know. I snapped – I must have snapped because when I came through the door my house was tore apart. Everything was cut to ribbons with knifes, the windows were busted out, the tv, the lamps was all busted and when I came through the door something hit me.

All I remember is I was on top of him eating his stomach out, biting his stomach out. They had to take him to the ambulance and everything.

Q Were you charged for that?

A No.

Q You said you were charged for some assaults.

What were they?

* * *

[255] The Court instructs the Jury that you have convicted the Defendant of an offense which may be punished by death. You must decide whether the Defendant shall be sentenced to death or to imprisonment for life and a fine of a specific amount, but not more than $100,000.

A Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt the following: That after consideration of his history and background, there is a probability that he would commit [256] criminal acts of violence that would constitute a continuing, serious threat to society.

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If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt, that after consideration of his history and background there is a possibility that he would commit criminal acts of violence that would constitute a continuing, serious threat society and you are unanimous, then you may fix the punishment of the Defendant at death.

Or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at imprisonment for life and a fine of a specific amount, but not more than $100,000.

If the Commonwealth has failed to prove the aggravating circumstance above, beyond a reasonable doubt, then you shall fix the punishment of the Defendant at imprisonment for life and a fine of a specific amount, but not more than $100,000.

Mr. Horan?

MR. HORAN: Thank you, Your Honor.

Thank you once again for your attention. I'll try to be brief.

Members of the Jury, it's probably fair to say [257] that there is no such thing as a good murder. They don't make good murders, just that some are worse than others. I suspect on the evidence before you that you probably feel this is as bad as any.

The legislature in recognition of the different kinds of murder than can be committed, the legislature has seen fit to have gradations of murder. Second degree murder where the maximum penalty is twenty years. First degree

murder where the maximum penalty is life imprisonment.

Then they select one category of crimes they call capital murder. This is the highest form of murder and it carries the potential of the death penalty in a proper case. It is restricted to very few crimes, as it should be, and among crimes that the legislature considers it proper is a crime where one willfully, deliberately and with premeditation kills a robbery victim.

But you'll notice that the legislature has not said that merely because it's one of these terrible crimes that the penalty must be death.

What the legislature has said is that in addition to it being one of these terrible crimes, one of these selected crimes, the legislature has said that the [258] twelve members of the Jury must also find that there is a probability that this Defendant would commit criminal acts of violence that does constitute a continuing serious threat to society. That's what the law calls future dangerousness.

The Commonwealth has the burden of satisfying you. Looking at the crime that was committed here, the history and the background of this Defendant, that it is probable that he will be dangerous in the future.

If you are satisfied to that and don't believe there is a true factor that mitigates it, then the proper punishment is death.

Members of the Jury, there are brutal crimes committed many times by people that aren't terribly brutal by nature. Murder is committed in passion, drunken brawls,

sometimes very brutal crimes but they're done by people who are basically not that kind of people.

The crimes to watch for and the people to watch for are brutal crimes committed by brutal people. We submit to you that this is one of those.

A, it's a senseless killing. B, it's the killing of a defenseless working man who was offering no threat to this Defendant.

[259] It's a funny thing about trying these kind of cases, the Jury sits there and you don't know much about victims, because to a certain extent in a murder case, the victim is – and I hate to use the word – certainly legally the victim becomes almost irrelevant.

We focus so much on the Defendant. In murder prosecution you really don't know an awful lot about the victim. In death they become pieces of paper.

A piece of paper written by the Medical Examiner. A piece of paper written by the Pathologist. Some photographs that are taken by police photographers when they look at dead bodies. We're pieces of paper in death.

In criminal trials there's a tremendous tendency to forget that what we're talking here about is the killing of an innocent man. Killing without an ounce of compassion, without an ounce of fairness. Killing of Mohammad Kayani for virtually no reason at all.

We look at the pieces of paper and we see a man on a slab and all we know is that this Defendant killed a 34 year old native of Pakistan at 1:00 o'clock in the morning at 7214 Beulah Street in Fairfax County.

We find out he's five foot nine, a hundred and [260] forty six pounds. We know the color of his eyes, the color of his hair. We don't know much about him at all because it's irrelevant.

The victim of this terrible murder is almost an after thought. We may not know much about him, members of the Jury, but it's probably fair to say this, the one thing we do know about him, is that 34 year old Mohammad Kayani simply did not deserve to die. We know that.

In the eyes of the law he's a total innocent. A working man going about his occupation, bothering no one, doing his job and slaughtered by this Defendant.

Of course at the trial phase, you just knew he killed Kayani. What you learned this morning and this afternoon, not only did he kill Kayani, but that two days before he had done almost the same thing.

He shot that forty year old Ethiopian right in the head. He shot him in the same way. He shot him in the course of an armed robbery. A man who's not doing battle with him. A man who's not challenging him. A man who is turning over the money. Until two weeks ago, he thought he had two notches in his killing belt.

We know we're dealing here with a brutal crime and we're dealing with a person for whom brutality is not [261] a one time aberration. It's a way of life. The question for you, is he a continuing serious threat to society, is it probable.

We submit to you that it is. We have here even at his age a career criminal. Starting at the age of fourteen purse snatching of a sixty five year old woman, for which he

got probation. Within months, theft of a moped. Breaking and entry of a home.

All of those together, he winds up in the juvenile home. He says there for a short period of time. In the middle of the next year he's back out. He's a probation violator, goes back to the juvenile home.

Finally in May of 1992, he's back on the streets of Fairfax County. When he finally got paroled in May of 1992, it's significant to note that this parole is for a robbery.

The first time he was tried as an adult, he was tried for robbery in 1988. He serves a little over four years total for that robbery, in May he's released.

On the evidence before you, on August 25, 1992, he robbed a Pizza Hut at the point of a gun. August 29, 1992, he robbed the Bragg Towers Hotel.

You heard the witness testify this morning, [262] robbed him at the point of a gun. Hit him in the head with the pistol at the end of the robbery. That's August 29, 1992.

August 30th, 1992, he robbed Domino's Pizza at the point of a gun in Alexandria and he robbed Domino's Pizza not long after he shot that Arlington cab driver through the head with the bullet coming out the side of his face.

And finally, he culminates his summer of dangerousness, his summer of dangerousness with the killing of Mohammed Kayani.

We submit to you members of the Jury, he is the epitome of dangerousness. He is a proven serious threat to society. The best indicator of future behavior is past behavior and he does it in spades.

It's rather interesting to look at the evidence as it was before you yesterday and the evidence as it is before you today and note one truly sinister element.

Shane Singh testified before you yesterday and he testified again this morning. When he finished testifying yesterday, part of the challenge of the Defense was you can't believe this guy, he's a con. He entered [263] into a plea agreement. He's a thief, don't believe him.

We find out today, that everything he said, with one exception, was quite true and that one exception is the most sinister part of this whole case.

Recall Shane Singh testify that before he shot Kayani, as he knelt there on the floor next to him with that .38 caliber revolver that doesn't shoot the .9 millimeter bullets very well, he tried to fire and he clicked the gun. It didn't go off, he pulled it again and he killed him with the second one.

Shane Singh testified this morning that when he tried to kill the cab driver, he clicked it once and it was the second pulling of the trigger that put the bullet through the cab driver's head.

You wonder, who do you believe. They were telling you yesterday don't believe Singh. Members of the Jury, it's obvious he's telling the truth and he certainly is collaborated by the two other victims in the 7-11. Both of whom testified that someone stood in the doorway of the

7-11 and clicked the weapon four or five times while they lay there on the floor.

Who do you think stood there and clicked that weapon four or five times toward those victims as they lay [264] on the floor.

I submit to you on this evidence of fair inference, it was this Defendant. He was perfectly willing to kill them too.

What's the first thing he said when he got into the automobile? He says to Wilson, "Why didn't you kill the rest of them?"

Remember Ramirez telling you Wilson said, "Man, we don't have to do that." No, they don't. But he does, because he's different. He's got a streak of violence and dangerousness in him that the law worries about. That's why the law says that if you find there's a probability that he'll commit serious acts of violence in the future, that you can penalize him with the penalty of death.

It is fortunate, members of the Jury, that there are few cases that come to that, because it's a very difficult chore for any one to ask for it or to decide it. Some cases ask for it. We submit to you this is a one of them. This particular Defendant constitutes, has in the past, will in the future, constitute a serious continuing threat because of his propensity for violence.

I ask you for the death penalty.

* * *

[268] us.

There are many sides to Bobbie Ramdass. You saw Bobbie crying in Court today. A man that Mr. Horan says has no conscience, has no remorse, has no feelings.

I submit to you that is not an animal. That is a human being. Perhaps a follower that has gone astray. A sheep that has left the flock.

If you believe that Bobbie Lee's a wild, crazed animal, then society must do something. I agree with you, they must. We must.

But I submit a wild animal removed from its environment is not merely destroyed. We cage it. We put it away for life and that is what you should do.

Why should we give Bobbie Ramdass the benefit of life when Mohammed Kayani was denied that?

That is a very difficult question to answer. Let's look at what makes Bobbie Ramdass up. His mother testified, "I taught Bobbie how to fight." That she stood him up like a boxer and punched him to teach him how to fight. To teach him how to take a punch. And what was Mama's credo? Don't throw the first punch, because if you're in Court then they can't say you threw the first punch.

* * *

[273] really just don't give a damn.

Today I am asking you to give a damn. I'm begging you to give a damn. I'm begging you to save a life. You have in your hands the opportunity to recognize that a human being has been saved. That a human being has been salvaged.

I'm begging you, regardless of your position, whether you believe an eye for an eye, this is the time that you can recognize your humanity. That you can recognize that a salvation has taken place. That there has been change. That there is some good in very [sic] one of us, whether it be me or Mr. Horan or anyone. There is good.

You saw Bobbie Lee stand there and tell you when he speaks of his brother, "He is my heart." That's good. There is good in that.

Bobbie Lee is going to jail for the rest of his life. The numbers of been run by you, ninety nine plus years. There are cases in Court, matters still outstanding.

How much does society need to exact? I agree he should be put away for them. He should never see the light of day. But to take another human life, that's not [274] right.

It is most ironic that as we have sat here today, over the past few days, they are burying Thurgood Marshall. One of the chief advocates against the death penalty.

I know your position. But I ask you to open your eyes. I ask you not to sentence Bobbie Lee to death. I ask you to find the miracle and see it as I do, as my co-counsel does.

I ask you to give him life. Life, he will never see the light of day, but may you not take his life.

Thank you, Ladies and gentlemen.

THE COURT: Mr. Horan.

MR. HORAN: Members of the Jury, the notion that this Defendant has found salvation seems like a very long stretch.

This Defendant on August 30th shot the cab driver in the head and believed he killed him. For six months he thought he killed him. Isn't it strange that salvation didn't set in on September 1st?

He kills Kayani on September 2nd and counsel suggests to you that salvation set in.

Members of the Jury, on September 3rd he's [275] selling a hot gun to a friend of his. A gun that he thinks has two deaths on it. He's selling it to a friend. He's putting it in the hands of someone else who may do something like this. Now does that sound like salvation?

Thank God we do not ask you to leave your common sense at the front steps of the Courthouse when you come in here.

Counsel tells you we the people of the United States are savages. We are not. There are savages among us, but the American people are not and we have a society that survives because the bulk of the American people are not savages.

When we have those in our ranks who can not possibly live by the rules of society, either here or in prison, then the death penalty becomes appropriate. Not before.

We'll leave it to you on the evidence you heard, on the history and the background and the terrible act he committed. We'll leave it to you whether salvation set in.

Counsel tells you he's a follower. He wasn't a follower when he went into Bragg Towers on August 29th. He wasn't a follower when he jumped the cab driver on [276] August 30th and he was the second man in the door with a gun on September 2nd when he killed Mohammed Kayani.

A lot of things he is, but a follower is not one of them. He's a killer. He should be punished for it.

Thank you.

THE COURT: Ladies and gentlemen, you have already selected a foreman, the verdict must be unanimous. If you will retire to the Jury Room, please.

(Whereupon, at approximately 4:20 o'clock, p.m., the Jury was excused from the Courtroom to begin consideration of the instant matter.)

(Whereupon, at approximately 6:06 o'clock, p.m., the Court reconvened.

THE COURT: Ladies and gentlemen, what I propose to do is to bring the Jury out and direct them to return tomorrow morning at 9:00 o'clock. Any objection?

MR. PIOTROWSKI: Do we have any idea, Your Honor, of any word from them?

THE COURT: Well, no we haven't heard from them and because of the hour, I assume that the need or want to go to dinner and that type of thing.

MR. HORAN: Your Honor, I wonder, could we at [277] least see if they're close? I mean if they've got any idea if they may be close to a verdict?

THE COURT: Bring them out, please.

(Whereupon, at approximately 6:07 o'clock p.m., the Jury returned to the Courtroom and resumed their seats in the Jury Box.)

THE COURT: Ladies and gentlemen, I asked the Bailiff to have you come out and tell you that you not only can, you should take as long as you need to reach a verdict, but because of the hour, in the event that you have not reached a verdict by 7:00 o'clock, you are directed to return tomorrow morning at 9:00 o'clock and resume your deliberations.

In the event that that occurs, during the overnight recess, please do not discuss the case with anyone.

If you would return to the Jury Room, please?

(Whereupon at approximately 6:08 o'clock, p.m. the Jury was excused from the Courtroom.)

(Whereupon, at approximately 7:02 o'clock, p.m., the Court reconvened.)

THE COURT: The Jury has sent out the following question which I will read for the record. I'll [278] show it to counsel and elicit any comments that you have to make.

"Question, if the Defendant is given life, is there a possibility of parole at some time before his natural death" and it's signed, I assume, by the foreman and dated January 29, 1993.

Show this to counsel, please.

Any comment, Mr. Horan.

MR. HORAN: Your Honor, I think the response is – the one right in the beginning of the models that you are to decide what a just punishment is and not to concern yourself with what happens thereafter. The Virginia Supreme Court for thirty years now, I think, has constantly said that is the answer.

THE COURT: Mr. Piotrowski?

MR. PIOTROWSKI: Your Honor, obviously I don't think that that answer is sufficient for the circumstances. I'm trying to suggest the wording and I anticipated this question and I hoped to have it written out for you, I don't, I'm trying to formulate it in my mind right now.

I believe that the Court (sic) should be told that they can not concern themselves with what will occur [279] after they impose their sentence.

I feel, however, Your Honor, though that the question itself implies that they have a perception that if they give a life sentence that he will be out in a very short period of time.

I'm looking for some kind of language that would balance out that perception. A suggestion that I have here in front of me is – I wrote as we talked, is that "You must not concern yourself with matters that will occur after you impose your sentence, but you may impose that your sentence will be the legal sentence imposed in the case."

I'm open to any other suggestions.

THE COURT: The model instruction which certainly assume is the one alluded to by Mr. Horan, is instruction number 2.700, which reads as follows:

"If you find the Defendant guilty, you should impose such punishment as you feel is just under the evidence and within the instructions of the Court. You are not to concern yourselves with what may happen afterward."

That's what the law is; isn't it, Mr. Piotrowski?

[280] MR. PIOTROWSKI: Your Honor, that's an instruction that's been given and been acceptable in the past. As we know, the Virginia Supreme Court has recently said that there is no legal presumption per se attached to the instructions in those books.

I think a situation like this, when you're talking about a death case, when the issue's this crucial, that something more than that is necessary because their concern is parole, which they aren't allowed to be told about.

MR. HORAN: Your Honor, I think that very instruction has been approved by the Virginia Supreme Court in capital cases.

THE COURT: I think in both the Clark and the Hinton cases.

Bring the Jury in, please.

(Whereupon, at approximately 7:08 o'clock p.m., the Jury returned to the Courtroom and resumed their seats in the Jury Box.)

THE COURT: Ladies and gentlemen, the Court is in receipt of the question which you sent out, which for the record is:

"Question, if the Defendant is given life is [281] there a possibility of parole at some time before his natural death?"

The answer is, ladies and gentlemen, that if you find the Defendant guilty, which you have in this case, you should impose such punishment as you feel is just under the evidence and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards.

Ladies and gentlemen, you are excused for this evening. If you will return, please, at 9:00 o'clock. Again, during the overnight recess, please do not discuss the case with anyone.

(Whereupon the Jury was excused from the Courtroom.)

The Court stands adjourned.

(Whereupon, at approximately 7:09 o'clock p.m. the hearing of the above captioned matter was recessed to reconvene January 30th, 1993, at 9:00 o'clock, a.m.)

[282] CERTIFICATE OF REPORTER

I, JUDY F. HILLERY, the Verbatim Reporter who was duly sworn by to well and truly report the foregoing proceedings, do hereby certify that they are true and correct to the best of my knowledge and ability; and that I have no interest in said proceedings, financial or otherwise, nor through relationship with any of the parties in interest or their counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of April, 1993.

/s/ Judy F. Hillery
JUDY F. HILLERY
Court Reporter

VIRGINIA:

IN THE CIRCUIT COURT
OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs. Criminal No. 77182

BOBBY LEE RAMDASS, (Filed May 1, 1993)

Defendant.

Circuit Courtroom
Fairfax County Courthouse
Fairfax, Virginia

Friday, April 2, 1993

The above-entitled matter came on to be heard before THE HONORABLE QUINLAN H. HANCOCK, Judge, in and for the Circuit Court of Fairfax County, Fairfax, Virginia, commencing at 3:15 o'clock p.m.

* * *

[60] officer tells us that the defendant told him that the shooting of the cab driver didn't bother him.

On page 8B, I guess, there is virtually a prophetic staff report done in 1987 by a staff psychologist who suggests that you're dealing here with a very dangerous, aggressive human being.

He hasn't changed from 1947 until now. We fully concur with the probation officer when the probation officer says on page 9A that we are dealing here with a

hard core individual who has no concern whatsoever for the life and property of others.

We would submit to Your Honor, as we submitted to that jury, that this is a case where the penalty of death is just and appropriate.

And we ask Your Honor to enter judgment in accordance with that jury's verdict.

—Thank you.

MR. PIOTROWSKI: Your Honor, the examination of the number of murders that have occurred in this country before and after the abolition of the death penalty does not support the theory that capital punishment has a unique deterrent affect.

This is a quote from Capital Punishment

* * *

[62] found guilty of capital murder.

The question we're here for today is not that he did these things, but what should the punishment be.

And our Supreme Court has consistently said that we got to examine the character of the individual. We've got to examine his background and his circumstances.

From 1974 on we're supposed to be narrowing the sentencer's discretion in this area.

According to Article 51.1 151B1 of the Code of Virginia, any person convicted of three separate felony offenses of murder, rape or robbery by presenting them a firearm, will not be eligible for parole.

In accordance with 53.1-151C of the Virginia Code, any person who receives a life sentence for a Class One felony will serve at least 25 years.

And according to 53.1151B persons sentenced to die shall not be eligible for parole.

Your Honor, now beyond any question, even though I think it was beyond any question at trial in this case, Bobby Lee Ramdass is not eligible for parole.

The pre-sentence report in this case indicates that he is convicted of robbery and sentenced to 76 years.

He is convicted of robbery on a different [63] occasion and sentenced to 18 years.

And he is convicted of a third robbery and sentenced to 14 years.

All of those with firearms.

Obviously, Your Honor, he has been convicted of murder here.

Today you have to impose a sentence for an additional robbery which at least will be one more event.

Those facts and circumstances indicate that Mr. Ramdass would never be eligible for parole. In effect, in answer the jury's question of, if Mr. Ramdass were given life in prison, would he die in jail?

The answer would be yes. He is not eligible for parole.

As you're aware, Your Honor, we attempt to contact jurors pertaining to their opinions. We have, in effect,

reached a total of six. Three were willing to talk to us. Three were not willing to talk to us.

I don't want to present the names here in the courtroom, but I will present what they said. Two men and one woman talked to us.

I think it's safe to say that three of them that [64] talked to us felt that if the answer to that question would have been, yes, and they know, they knew that he would have never gotten out of prison, they would have given him life rather than death.

Two of them expressed the opinion to us that that would have been the result among all of them beyond question, if they had had that information.

They expressed the opinion that, to the contrary, because they weren't told or given the answer that they were not to consider it, that they all had a perception that he would be paroled.

That they had a perception that parole was approximately 20 years in the State of Virginia.

The studies that have been done show that based on studies done here in Virginia, as a matter of fact, one was done in Edward County, Virginia, indicates that the average juror believes that a person sentenced to life will serve seven to ten years before parole.

And other studies indicate that the defendant sentenced to life for murder during a robbery will serve no more than ten years.

These studies are taken and quoted from the Capital Defendant in parole eligibility, an article by [65] Chrystal Straub in the Capital Defense digest in the fall of 1992.

The article also points out, as we all know, that a common question from a jury in Virginia is, will the individual remain in prison if we give him a life sentence?

As far as I know, that question has arisen in the last three cases that have been tried here in Fairfax County. It has arisen at least a dozen times since 1974 in other Virginia cases where it's been noted.

The reason and justification for not telling the jury about parole is based on two prongs here in Virginia.

Actually, and in the rest of the country where the ruling is the same.

The first prong is that if the jury knew about parole, they would have a tendency to increase the sentence to make up for what they thought was proper time.

And, therefore, the defendant would end up receiving a longer sentence, a legitimate rationale

Which in the context of a capital murder defendant, though, creates just the opposite affect because the perception is that if a person is sentenced to [66] life, he will be paroled, which defeats one of the major purposes for which they're talking about.

Once they determine the person is guilty, once they determine that the person is dangerous, they have reached a factual conclusion that they don't want him back in society.

If they knew that he was going to stay in jail, then that would permit them to exercise the mercy that is supposed to be available pursuant to the mitigating factors in cases.

The other rationale for not telling the Court about parole in Virginia is that that's an executive function, not a judicial function, and that the executive function manages the system, and the judicial function imposes the punishment.

A rationale, Your Honor, also that it is not exactly true in that the judicial function here in telling the jury about it is not trying to manage it, but just trying to provide the information to the Court.

Nobody manages the individual, nobody controls the individual once the sentence is imposed, the system still controls him.

Both rationale, again, and the fact that the [67] jury cannot be told about parole and eligibility, there are too many cases saying that your ruling was right in this case, and that they can't be told about it is accurate.

But the fact can be considered, which is why we want you to consider what information we could get to tell you what we felt the jury would do if they had known the true facts.

If they had the right and they should have the right in this case because it's denying to the jury a crucial litigating factor which we're not supposed to be doing anymore, we're supposed to be able to present under the

Constitution and under Ackey and Locket, we're supposed to be able to present to the Court all mitigating factors.

It's surely unusual and surely strange when saying that the person is going to spend the rest of their life in prison as a mitigating factor, but under these circumstances, it surely and certainly is a mitigating factor.

If we can't present it to the Court, we do the next best thing we can, Your Honor, we ask you to consider it and we ask you to consider a little bit of evidence

* * *

[69] that have impaired him, a little here, a little there, things that were not considered, things that were not done.

The history we have gone over. The depravity. The things we heard for the first time today, sleepwalking with a butcher knife at a young age.

The violence he was exposed to. The situation he was in.

Your Honor, at 1986 a staff psychologist, Juanita Hash, first interviewed the defendant, described him as an impulsive youth who was overrly [sic] concerned with seeking satisfaction from his environment, considering a young man, considering the environment he was from, that's not unusual.

He has a high energy level and becomes easily bored. Psychologists indicates that his lack of parenting has interfered with his developing a more acceptable value system.

He had identified with a more anti-social group.

This may have been the first time we officially recognize the problem but we did recognize it in 1986 at a time when he was in our system, not the first time he had been in our system.

[70] The first time was when they were evicted from Landmark, do you remember back to the trial, and social services took the kids away from their mother for a period of time because she couldn't support them or take care of them.

It was in 1986, also, that Dr. Draper described his situation as an unbelievably dysfunctional family, which has presented the worst possible role model.

He has himself been violently abused by others and has joined with his mother in attacking and robbing others.

The only time that Bobby Lee functions, and according to the psychologists and the people in prison is when he was in a structured environment where there were immediate responses to his misbehaviour [sic], he could function.

In the situation under which they lived, he could manage just the responsibility that he was given that of taking care of his brother and staying alive.

It's been six months since I and my associates have assumed this case and we were perplexed, as perplexed today what I could say to you could possibly change your mind.

* * *

[74] Your Honor, that's what we ask for in this case, we ask for an opportunity, that's all.

The man will never get out of jail. We ask for an opportunity for him to contribute somehow in his [sic] little a way as he thinks of it in telling others not to do it, or perhaps, hopefully with age and education, or maybe just as a guinea pig in the future.

But in a way that he will be able to do.

Thank you.

THE COURT: With respect to the issue raised in the memorandum that were filed yesterday, the issues raised in those pleadings, have been well settled both in the federal and the state courts adverse to the requested relief.

The motion to declare electrocution unconstitutional is denied.

The motion to declare electrocution in Virginia unconstitutional is denied.

And the request for an evidentiary hearing is denied.

MR. PIOTROWSKI: Thank you.

THE COURT: Mr. Ramdass, if you will please stand.

[75] Is there any reason why judgment should not be pronounced upon you at this time?

THE DEFENDANT: No, sir.

THE COURT: Is there anything else that you would like to say to the Court?

THE DEFENDANT: No, sir.

THE COURT: Mr. Ramdass, in connection with Count 2 of the indictment, which is the robbery count to which you plead guilty, I hereby sentence you to a term of life imprisonment.

As to Court 3 of the indictment, the use of a firearm in the commission of the murder, in accordance with the recommendation of the jury, is the judgment of the Court that you be sentenced to serve a period of four years in the penitentiary.

As to Count 1 of the indictment, the capital murder count, in accordance with the recommendation of the jury, I hereby sentence you to death and fix your execution for July the 10th, 1993.

It is my duty to advise you that with respect to Counts 1 and 3 of the indictment you have the right to appeal from the decision of the Court, in addition to the automatic review of the death sentence.

* * *

Bobby Lee RAMDASS,

v.

COMMONWEALTH of Virginia.

Record No. 930693.

Supreme Court of Virginia

Nov. 5, 1993.

Michael S. Arif, Burke (Sharon B. Soloway, Martin, Arif, DeWilde & Soloway, on brief), for appellant.

Katherine P. Baldwin, Asst. Atty. Gen. (Stephen D. Rosenthal, Atty. Gen., on brief), for appellee.

Present: All the Judges.

WHITING, Justice.

In September 1992, Bobby Lee Ramdass was indicted for the murder of Mohammad Z. Kayani in the commission of a robbery while armed with a deadly weapon, the robbery of Kayani, and the use of a firearm during Kayani's murder. Prior to a jury trial, Ramdass pled guilty to the robbery of Kayani and, over Ramdass's objection, the court deferred action on his guilty plea.

Thereafter, in a bifurcated trial conducted under the provisions of Code §§ 19.2-264.3 and -264.4, a jury convicted Ramdass of the capital murder of Kayani and fixed his punishment at death predicated upon a finding of "future dangerousness." The jury also convicted Ramdass of the use of a firearm in the commission of Kayani's

murder and fixed his punishment at imprisonment for four years.[1]

After the jury returned its guilty verdicts, the court found Ramdass guilty of Kayani's robbery and referred the robbery and weapon convictions to the district probation officer for a presentence investigation and report. Following the jury's verdict of death in the sentencing phase of the capital murder charge, the court referred the case to the district probation officer for "investigation and report before sentencing." Code § 19.2-264.5. Upon consideration of the probation officer's report covering all three charges, the court sentenced Ramdass to life imprisonment upon the robbery charge and imposed the sentences fixed by the jury on the remaining charges.

Ramdass is before the Court for automatic review of his death sentence, and we have consolidated that review with the appeal from his capital murder conviction. Code § 17-110.1.

FACTS

Because the Commonwealth prevailed in the trial court, we will view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the *Commonwealth*. *Parks v. Commonwealth*, 221 Va. 492, 498, 270 S.E.2d 755, 759 (1980).

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[1] The jury was authorized to fix a four-year term of imprisonment for the firearm violation because it was Ramdass's second conviction for that offense. Code § 18.2-53.1.

During the night of September 1 and early morning of September 2, 1992, Ramdass and Darrell Wilson, both armed with pistols, were returning home in a car with three other men, Shane Singh, Edward O'Connor, and Candelerio Ramirez, after abandoning a plan to rob persons at a Roy Rogers restaurant in Fairfax County. On the way, Ramdass suggested that they rob persons at a 7-Eleven store on Buelah Street in Fairfax County.

Accordingly, near one o'clock on the morning of September 2, the five men entered the 7-Eleven store. Ramdass entered first and "drew" his pistol on Kayani, a 7-Eleven clerk who was behind the cash register. Wilson, who also displayed his pistol, ordered all the customers to lie on the floor and not look at him. The other three men, who were unarmed, took the customers' wallets, money from the cash register, and cigarettes and lottery tickets from the store's stock.

After Ramdass ordered Kayani to open the safe, Kayani knelt down next to the safe and unsuccessfully tried to open it. Ramdass squatted next to Kayani and yelled at him to open the safe "or I'll blow your f – – head off."[2] Wilson fired his pistol at one of the customers on the floor. Immediately thereafter, Singh, standing behind Ramdass, saw Ramdass shoot Kayani in the head on his second attempt to get the weapon to fire.

Just after Ramdass shot Kayani, Ramirez returned from a back room in the store. Ramirez saw Ramdass

[2] Another employee of the 7-Eleven store testified that a clerk could not open the part of the safe containing most of the money because the store manager had the keys.

laughing as he stood over Kayani's body. Later, Ramirez heard Ramdass say that he shot Kayani because he "took too long." Shortly thereafter, Ramirez opened the front door, and Wilson, Singh, and O'Connor ran out. As Ramirez held the door open, he urged Ramdass to "[c]ome on." However, Ramdass was "clicking the gun at the people on the floor" and told Ramirez to "[s]hut up or I'll put one in you." One of the customers also heard the clicking of the gun as Ramdass left.

When they got in the car, Ramirez heard Ramdass ask Wilson, "Why didn't you get rid of the people on the floor?" After the men divided the robbery proceeds at Singh's home, Ramdass told Ramirez, "Don't tell anybody about this [or] I'll kill you and I'll kill your whole family."

Singh, a co-owner of the gun with Ramdass, testified that the gun would not fire unless held at a certain angle because the "bullets" in the chamber were not the right size for the gun. Julian Jay Mason, Jr., a forensic scientist specializing in firearms identification, later examined and test fired the gun. Mason testified that the 9 millimeter cartridges Ramdass used in the gun were smaller than the 38 caliber cartridges specified for the gun. Therefore, when the gun's muzzle was pointed down, the 9 millimeter cartridges slid too far forward to be struck by the firing pin. Mason further testified that when the muzzle was pointed up, the cartridge slid back closer to the firing pin, and the gun could be fired.

ISSUES PREVIOUSLY RESOLVED

Ramdass assigns a number of errors and makes arguments that have been answered in previous decisions of this Court. Ramdass does not offer sufficient reasons to justify a modification of our previously expressed views. Therefore, we will reaffirm our earlier decisions and reject Ramdass's contentions as follows:

A. The court's denial of Ramdass's request for appointment of a medical doctor and an investigator at state expense violated his Fourteenth Amendment Due Process and Equal Protection rights. Answered by *O'Dell v. Commonwealth*, 234 Va. 672, 686, 364 S.E.2d 491, 499, *cert. denied*, 488 U.S. 871, 109 S.Ct. 186, 102 L.Ed.2d 154 (1988); *Townes v. Commonwealth*, 234 Va. 307, 332, 362 S.E.2d 650, 664 (1987), *cert. denied*, 485 U.S. 971, 108 S.Ct. 1249, 99 L.Ed.2d 447 (1988); *Gray v. Commonwealth*, 233 Va. 313, 329-30, 356 S.E.2d 157, 166, *cert. denied*, 484 U.S. 873, 108 S.Ct. 207, 98 L.Ed.2d 158 (1987).

B. The court's application of Code § 19.2-264.4(C) in the admission of evidence of unadjudicated criminal conduct in the sentencing phase violates the Eighth and Fourteenth Amendments of the United States Constitution. Answered by *Watkins v. Commonwealth*, 238 Va. 341, 351-52, 385 S.E.2d 50, 56-57 (1989), *cert. denied*, 494 U.S. 1074, 110 S.Ct. 1797, 108 L.Ed.2d 798 (1990).

C. The court's admission of evidence of unadjudicated criminal conduct is unconstitutional under any circumstances because of the requirement of a "greater degree of reliability where the death sentence is imposed." Answered by *Satcher v. Commonwealth*, 244 Va. 220, 228, 421 S.E.2d 821, 826 (1992), *cert. denied*, 507 U.S. 933, 113 S.Ct. 1319, 122 L.Ed.2d 705 (1993), and *Stockton v. Commonwealth*, 241 Va. 192, 210, 402 S.E.2d 196, 206, *cert. denied* 502 U.S. 902, 112 S.Ct. 280, 116 L.Ed.2d 231 (1991).

D. The court's refusal of Ramdass's proffered jury instruction that required proof of unadjudicated criminal conduct beyond a reasonable doubt violated his due process rights. Answered by *Stockton*, 241 Va. at 210, 402 S.E.2d at 206.

E. The court's denial of Ramdass's motion to declare unconstitutional the provision of Code § 53.1-233 providing for execution of prisoners by electrocution violates the prohibitions against cruel and unusual punishment contained in the United States and Virginia Constitutions. Answered by *Poyner v. Commonwealth*, Order entered in Record Number 930301 on March 10, 1993, and *Boggs v. Commonwealth*, Order entered in Record Number 900967 on July 18, 1990 (both orders rejected same arguments of unconstitutionality that used essentially same background materials relied upon by Ramdass as to execution by electrocution generally and "as carried out in Virginia's electric chair"); *Stockton v. Commonwealth*, 241 Va. at 215, 402 S.E.2d at 209-10; *Martin v. Commonwealth*, 221 Va. 436, 439, 271 S.E.2d 123, 125 (1980); *Hart v. Commonwealth*, 131 Va. 726, 743, 109 S.E. 582, 587 (1921).

ASSIGNMENTS OF ERROR WAIVED

Ramdass did not brief, and has therefore waived, Assignments of Error Numbers Seven, Seventeen, Eighteen, Nineteen, Twenty, and Twenty-four. Rule 5:27(e).

PRETRIAL MOTIONS

Motion for Bill of Particulars

Ramdass filed a motion for a bill of particulars seeking specific details of the evidence in support of the Commonwealth's case. However, the indictment described the offenses charged in conformity with the requirements of Code § 19.2-220 and, therefore, was sufficient to give Ramdass "notice of the nature and character of the offense[s] charged so he [could] make his defense." *Satcher*, 244 Va. at 231, 421 S.E.2d at 828 (quoting *Wilder v. Commonwealth*, 217 Va. 145, 147, 225 S.E.2d 411, 413 (1976)). Under these circumstances, the trial court did not err in denying Ramdass's motion for a bill of particulars.

Motion for Discovery of Accomplices's Polygraph Tests

Ramdass contends that the trial court erred in denying both his motion for discovery of the questions, answers, and results of his accomplices's polygraph examinations and his subsequent oral motion for the court's in camera inspection of those tests. According to Ramdass, the Commonwealth was constitutionally required to produce these tests because they may have contained "potentially exculpatory evidence."[3] We do not agree.

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[3] Ramdass concedes correctly that conclusory statements that any of these co-defendants may have been "deceptive" or "flunked" the polygraph examination are not admissible. *Robinson v. Commonwealth*, 231 Va. 142, 156, 341 S.E.2d 159, 167 (1986).

Fairness to the defendant requires the Commonwealth's pretrial production of exculpatory evidence under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1197, 10 L.Ed.2d 215 (1963). And evidence that impeaches the credibility of a Commonwealth witness is exculpatory evidence. *Robinson v. Commonwealth*, 231 Va. 142, 150, 341 S.E.2d 159, 164 (1986) (citing *United States v. Bagley*, 473 U.S. 667, 676-77, 105 S.Ct. 3375, 3380-81, 87 L.Ed.2d 481 (1985)). However, there is no general constitutional right to discovery in a criminal case, and *Brady* did not establish one. *Lowe v. Commonwealth*, 218 Va. 670, 679, 239 S.E.2d 112, 118 (1977), *cert. denied*, 435 U.S. 930, 98 S.Ct. 1502, 55 L.Ed.2d 526 (1978) (citing *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 845, 51 L.Ed.2d 30 (1977)).

In order to establish that the Commonwealth has violated a defendant's *Brady* rights, the record must indicate that the undisclosed evidence was in fact exculpatory and material either to guilt or to punishment. *Lowe*, 218 Va. at 679, 239 S.E.2d at 118. Nothing in this record indicates either that the Commonwealth's Attorney has withheld exculpatory information or that the answers given by Ramdass's accomplices in their polygraph tests would be favorable to him and material to his guilt or punishment.[4] Ramdass's speculation that such statements

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[4] The Commonwealth's Attorney advised Ramdass's attorney prior to trial that the answers of O'Connor, one of his accomplices, were deceptive in that he attempted to minimize his role in the 7-Eleven incident. The Commonwealth's Attorney also informed Ramdass's attorney of three persons who allegedly would provide an alibi defense, but he also advised

might contain "potentially exculpatory evidence" imposes neither a duty of disclosure upon the Commonwealth, *id.*, nor a duty of inspection in camera by the court. *United States v. Navarro*, 737 F.2d 625, 631-32 (7th Cir.), *cert. denied*, 469 U.S. 1020, 105 S.Ct. 438, 83 L.Ed.2d 364 (1984).

During oral argument, counsel for Ramdass contended that without access to the polygraph examinations the defense could not show that these records contained exculpatory evidence which was material to guilt or punishment. Although a defendant need not make an avowal of how a witness might testify in order to obtain pretrial discovery of a witness's statement to police, he should describe the events to which the witness might testify and the relevance of such matters to the crime charged in order to demonstrate its required constitutional materiality to his guilt or punishment. *See United States v. Valenzuela-Bernal*, 458 U.S. 858, 871-72, 102 S.Ct. 3440, 3448-49, 73 L.Ed.2d 1193 (1982). Ramdass's only claims of materiality are: (1) that because he was denied access to the polygraph examinations, "meaningful cross-examination" of Singh and Ramirez was "straightjacketed," and (2) that he might have been able to impeach their credibility with "any additional information gleaned through investigation of leads created by the polygraph facts." However, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *United*

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that they had made inconsistent statements. We note that Ramdass did not call any of those persons as witnesses.

States v. Agurs, 427 U.S. 97, 109-110, 96 S.Ct. 2392, 2400, 49 L.Ed.2d 342 (1976).

Considering Ramdass's guilty plea to Kayani's robbery and Singh's uncontradicted testimony that Ramdass shot Kayani, we conclude that Ramdass has not established the necessary constitutional materiality to require the pretrial production of the polygraph tests either for his inspection or for the court's in camera inspection. Hence, the trial court did not err in denying Ramdass's discovery motions relating to those tests.

Ramdass's Motion for Ex parte Hearing Relating to Experts

Ramdass, an indigent, maintains that the court erred in denying an ex parte hearing of his motion for the appointment of a medical doctor and a private investigator to assist in his defense.[5] Ramdass argues that because he must make "a threshold showing of the significance of the expert's testimony" to obtain such appointments, an ex parte hearing is required to avoid a disclosure of his potential defenses to the Commonwealth's Attorney. Accordingly, Ramdass argues, the court's denial of his request violated his Fifth Amendment right against self-incrimination, his Sixth Amendment right to confrontation, his Fourteenth Amendment right to due process,

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[5] On brief, Ramdass contends that the court erred in failing to appoint "other expert witnesses," but the transcript does not reveal that he asked for any experts other than a doctor and a private investigator. Accordingly, we do not consider this contention. Rule 5:25.

and "Article I Section 8 and 9 of the Virginia Constitution."

However, Ramdass offers no persuasive argument or authority supporting this contention. Indeed, none of the cases he cites deals with the constitutional rights he asserts in this case. Most of those cases deal with the application of a federal statute creating a right to an ex parte hearing when an indigent requests expert assistance in a federal action. 18 U.S.C. § 3006A(e) (1993).

We perceive no reason to depart from our previous holding that there is no constitutional right to such a hearing. *O'Dell,* 234 Va. at 686, 364 S.E.2d at 499. Hence, we find no merit in this assignment.

THE ROBBERY CHARGE

Before the venire entered the courtroom on the first day of trial, Ramdass pled guilty to the robbery of Kayani, offered to make a proffer of the evidence of his guilt and to waive his right to a presentence report, and moved the court to find him guilty and immediately sentence him. The Commonwealth's Attorney objected, contending that an immediate adjudication of guilt might raise an issue of Ramdass's right to assert a double jeopardy defense to the remaining charges. The court denied Ramdass's motion, deferred its adjudication of guilt and sentencing, and proceeded with the trial of the remaining charges.

After the Commonwealth rested its case in chief in the guilt phase of the trial, the court denied Ramdass's

renewed motion for an adjudication of guilt on the robbery charge. When the jury returned a guilty verdict on the capital murder and weapon charges, the court found Ramdass guilty of all three charges. Ramdass again waived his right to a presentence report and moved the court to sentence him immediately. The court denied that motion. Instead, it referred the matter to a probation officer for a presentence investigation and report pursuant to the provisions of Code § 19.2-299.

According to Ramdass, the court violated his Fifth and Fourteenth Amendment rights in denying these motions. Had there been an immediate adjudication of his guilt in Kayani's robbery during the sentencing phase, Ramdass claims that he could have established his ineligibility for parole because of his three separate convictions of armed robbery. Code § 53.1-151(B1).[6] However, we need not decide whether the court abused its discretion in deferring Ramdass's conviction, because the court had found Ramdass guilty of the robbery before the sentencing phase.

Evidence of Ramdass's parole ineligibility was inadmissible in any event. We repeatedly have held that such evidence of parole ineligibility is inadmissible in capital murder cases. *Wright v. Commonwealth,* 245 Va. 177, 197, 427 S.E.2d 379, 392 (1993). We perceive no reason to modify our views on this issue and, therefore, we find no

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[6] As pertinent, Code § 53.1-151(B1) provides that: "Any person convicted of three separate felony offenses of . . . robbery by the presenting of firearms or other deadly weapon . . . shall not be eligible for parole."

violation of Ramdass's constitutional rights in delaying his adjudication of guilt.

GUILT PHASE

Limitation of Cross-Examination

[8] Ramdass contends that the court erroneously restricted his right of cross-examination in refusing to permit impeachment of Singh and Ramirez by questioning their involvement in several unadjudicated crimes. It is well settled in Virginia that a litigant's right to impeach the credibility of adverse witnesses by showing their participation in criminal conduct has been confined to questions about a conviction for a felony, perjury, and a misdemeanor involving moral turpitude. Code § 19.2-269 (felony and perjury; first enacted in 1919, Code § 4779 (1919)); *Clark v. Commonwealth*, 202 Va. 787, 790, 120 S.E.2d 270, 272 (1961) (misdemeanor involving moral turpitude). This limitation upon a defendant's impeachment rights is a reasonably necessary measure to restrict the scope of a criminal trial. As we pointed out in *Clark*, admission of unadjudicated crimes for purposes of general impeachment of a witness would "lead to confusion in directing the jury's attention to collateral matters and away from the issues of the case." *Id.* at 790, 120 S.E.2d at 273.

Nevertheless, Ramdass claims that the trial court's adherence to this settled practice violated his confrontation rights under the Sixth Amendment of the United States Constitution and Article I, § 8 of the Virginia Constitution. He cites no authority to support such an expansive application of these rights, and we have found

none. *Cf. Brown v. Commonwealth*, 246 Va. 460, ___, 437 S.E.2d 563, 564-65 (1993) (this day decided). Accordingly, we conclude that the trial court did not err in this limitation of Ramdass's cross-examination.

Next, Ramdass maintains that the trial court erred in refusing to permit him to ask Ramirez: "Did it surprise you that there were no fingerprints found [in the back room where Ramirez said he was when Ramdass shot Kayani]?" We find no abuse of the court's discretion in excluding such evidence; whether Ramirez was surprised would not be probative.

Instructions

Ramdass contends that the trial court erroneously included the emphasized language in a part of the burden of proof instruction: "The jury must limit its consideration to the evidence introduced, and you are not to go outside the evidence to hunt up doubts, nor must you entertain doubts which are speculative or conjectural." According to Ramdass, this emphasized language specifically precluded the jurors from using their common sense in deciding whether the Commonwealth had carried its burden of proof. We do not agree.

The language complained of must be read in the context of the sentence and of the instruction relating to the jury's duty to weigh the evidence. Among other things, that instruction specifically told the jurors that "you are entitled to use your common sense in judging any testimony." Reading the instructions as a whole, we conclude that the language complained of neither expressly nor impliedly precluded the jurors from using

their common sense in deciding whether the Commonwealth had proved its cases.

Next, Ramdass argues that the court erred in refusing his proposed finding Instruction A. Ramdass's proposed instruction included first degree murder as a lesser-included offense of the capital murder charge should the Commonwealth fail to prove that the killing was "willful, deliberate and premeditated." We find no merit in this argument.

We do not agree with Ramdass's conclusory statements that his proposed instruction provided a "clearer and more precise connection between the two crimes, which actually allows the jury to weigh the offenses against each other in a more balanced and coherent manner, and a more accurate statement of the law." The court granted separate finding instructions in essentially the same language as Ramdass's proposed instruction. One instruction dealt with capital murder and the other dealt with first degree murder. Since Ramdass's tendered instruction essentially duplicated those instructions, the court did not abuse its discretion in refusing to grant a duplicative instruction. *Eaton v. Commonwealth*, 240 Va. 236, 255, 397 S.E.2d 385, 396 (1990), *cert. denied*, 502 U.S. 824, 112 S.Ct. 88, 116 L.Ed.2d 60 (1991).

Next, Ramdass complains that the court erred in failing to grant his tendered Instruction H that read:

> If a witness makes inconsistent statements at different stages of his testimony in regard to the subject matter under investigation, this does not render his testimony nugatory, and it is the

> province of the jury to pass upon such inconsistent statements and to give or withhold its assent to the truth of the particular statement.

Instead, the court granted the Commonwealth's Instruction I that read:

> If a witness makes a statement at this trial inconsistent, contradictory, conflicting or materially different from that made on other occasions, it does not render his testimony nugatory, but it is the duty of the jury to determine the truth or falsity of the statements made in this trial and not elsewhere.

We find no abuse of discretion in the trial court's refusal to grant the tendered instruction, which essentially duplicated the language of granted Instruction I.

SENTENCING PHASE

Ramdass argues that the court erred in refusing to respond to the jury's question, "[i]f the defendant is given life, is there possibility of parole at some time before his natural death?" Ramdass maintains that his parole ineligibility should have been disclosed to the jury in answer to this question. Such a response, he contends, would have aided the jury in choosing the appropriate sentence.

We repeatedly have held that a jury should not hear evidence of parole eligibility or ineligibility because it is not a relevant consideration in fixing the appropriate sentence. *Wright*, 245 Va. at 197, 427 S.E.2d at 392. Ramdass advances no persuasive reason, and we perceive none, to modify our previous rulings. Accordingly, we

conclude that the court correctly refused to advise the jury about Ramdass's ineligibility for parole. We also conclude that the court, using the language suggested in *Hinton v. Commonwealth*, 219 Va. 492, 495, 247 S.E.2d 704, 706 (1978), as an appropriate response to such a question, correctly told the jury that "you should impose such sentence as you feel is just under the evidence and within the instructions of the court. You are not to concern yourselves with what may happen afterwards."

SENTENCE REVIEW

As required by Code § 17-110.1(C), we review the record to determine whether Ramdass's death sentence (1) was imposed under the influence of passion, prejudice, or any other arbitrary factor, or (2) is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

Although Ramdass does not contend that the death sentence was imposed in violation of either of these factors, we have examined the records in all capital murder cases accumulated by this Court pursuant to Code § 17-110.1(E), paying particular attention to those cases in which the underlying felony was robbery and the death penalty was based solely on "future dangerousness." These cases are compiled in *Yeatts v. Commonwealth*, 242 Va. 121, 143, 410 S.E.2d 254, 267-68 (1991), *cert. denied*, 503 U.S. 946, 112 S.Ct. 1500, 117 L.Ed.2d 639 (1992).

Our review of those records, as well as the records of cases in which life imprisonment was imposed in similar cases, leads us to the conclusion that Ramdass's death sentence was neither excessive nor disproportionate to

sentences generally imposed by other sentencing bodies in Virginia for crimes of a similar nature. The record in this case shows that Ramdass, who was born on October 19, 1971, has been involved in criminal activity since he was 14 years old.

His first violent offense was that of "purse snatch[ing]" from an elderly woman in 1985. During the time Ramdass was on probation for that offense, he began to sell illegal drugs. Soon after, he was involved in the unauthorized use of a moped and in the statutory burglary of a dwelling with the intent to commit larceny. As a result, Ramdass was committed to state juvenile facilities in January of 1986 and was paroled in September of that year. Within three months of that release, Ramdass had violated his parole and was recommitted. He remained in custody until November of 1987, when he was released for a 30-day home visit. Ramdass was classified as an escapee when he failed to return to the state juvenile facility at the end of his home visit.

On February 20, 1988, Ramdass robbed Frederick Thompson. When the police arrested Ramdass for that offense, he was sleeping with a loaded revolver on his bedside table. Ramdass, treated as an adult for that offense, pled guilty and was sentenced to a term of seven years in the penitentiary. Ramdass was released on mandatory parole in May of 1992.

Within three months of that release, while still on parole, Ramdass again acquired a gun. Shortly thereafter, he committed six armed robberies, some accompanied by physical violence to the victims.

The first two robberies occurred on August 25, 1992, when Ramdass abducted Robina Khan, robbed Malik Hasfiz, and robbed and struck Richard Imlow in a Pizza Hut in Fairfax County. Ramdass's third robbery was that of Christopher Allen Crissel, a clerk at Bragg Towers, an apartment-hotel in Alexandria, on August 29. Crissel testified that Ramdass struck Crissel in the jaw "as hard as he could, with a lot of impact [and] said 'Give me the f -- money or I'll blow your head off.' " After Crissel gave Ramdass over $500 from a desk drawer, Ramdass hit the back of Crissel's head with his gun "as hard as he could."

Ramdass committed his fourth and fifth robberies on the same day. On August 30 at about 6:00 p.m., Ramdass robbed Emmanuel Gilbert Selassie and shot him in the head at close range. Later that evening, he robbed a clerk at a Domino's Pizza in Arlington. Then, on September 2, in the present case, Ramdass robbed Kayani in Ramdass's sixth robbery in eight days; he also shot Kayani in the head at close range and caused his death.

Finally, our review of the record discloses nothing to suggest that Ramdass's death sentence was imposed under the influence of passion, prejudice, or any other arbitrary factor.

CONCLUSION

We find no error in these cases. In addition, we find no basis in the record to commute the death sentence to imprisonment for life. Accordingly, we will affirm the trial court's judgment.

Affirmed.

Bobby Lee RAMDASS, petitioner,

v.

VIRGINIA.

No. 93-8309.

Supreme Court of the United States

June 20, 1994.

Case below, 246 Va. 413, 437 S.E.2d 566.

On petition for writ of certiorari to the Supreme Court of Virginia. The motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the Supreme Court of Virginia for further consideration in light of *Simmons v. South Carolina*, 512 U.S. 154, 114 S.Ct. 2187, 129 L.Ed.2d 133 (1994).

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 930693

BOBBY LEE RAMDASS,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

BRIEF OF APPELLANT

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SIMMONS ARGUMENT

Defendants' Questions Presented numbered eight (8) Nine (9) and eleven (11) directly apply in a review under *Simmons v. South Carolina* but counsel respectfully requests that you again consider all of the issues raised in

his initial appeal to this court and he waives no issue previously raised at the trial or appellate levels.

I. THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT WAS VIOLATED BY THE REFUSAL OF THE TRIAL JUDGE TO INSTRUCT THE JURY THAT DEFENDANT WAS INELIGIBLE FOR PAROLE WHEN THE PROSECUTION RELIED UPON FUTURE DANGEROUSNESS TO JUSTIFY IMPOSITION OF THE DEATH PENALTY.

In *Simmons v. South Carolina*, 512 U.S. ___ 114 S.Ct. ___ 129 L Ed 2d 133, (1994) the Supreme Court held that where a defendants' future dangerousness is in issue and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible. *Simmons*, Justice *Blackmun*, 129 L Ed. 2d at 1238 512 U.S. ___ (1994).

In Virginia, future dangerousness and/or vileness are the only conditions for imposing the death penalty and the one utilized must be found beyond a reasonable doubt. Va Code § 19.2-264.2.

In this case, the Commonwealth chose to rely upon "future dangerousness" only. The jury was thus instructed only on future dangerousness, and the jury imposed the death penalty on that basis.

Ramdass is ineligible for parole because he was convicted on 2 February, 1988, of robbery; on 22 January 1993 of robbery and use of a firearm; on 9 February 1993 of robbery, and on 18 February 1993 of armed robbery. (JA pgs. 1423, 1413, 1434, 1406). Of course, the 9 & 18 February convictions occurred after the jury findings in this

case, although the offenses occurred prior to the trial offenses. The 1988 conviction, and 22 January conviction of course were prior to this trial and Ramdass pled guilty to the robbery associated with this offense on the first day of trial. (JA pg. 234).

The applicability of Va Code § 53.1-151B.1 has not been questioned by the Commonwealth at trial or on appeal. The Commonwealth has relied upon the Virginia law as expressed by *Stamper v. Commonwealth*, 220 Va 260, 257 S.E.2d 208, (1979) *cert. denied*, 455 U.S. 972 (1980) that the jury will not receive or consider any evidence or information concerning parole.

Although the jury, during deliberation, requested information on parole, asking if Ramdass would die in prison (JA pgs. 1184.1175-1178) and counsel attempted to frame an informative instruction, the Commonwealth objected and the trial judge cut off further discussion and improperly instructed the jury that they were not to concern themselves with what occurred after trial. (JA pg. 1179). An instruction of this type does nothing to dispel the reality known to the reasonable juror that all life term defendants are eligible for parole. See *Simmons* at pg. 146.

In this case information provided by three (3) of the jurors confirms that the jury was aware that parole was a possibility (JA pp. 1668). This fact provides more evidence than was available in *Simmons*, ie. a reasonable likelihood that the jury applied the challenged instruction in the wrong way. Counsel has proffered testimony from three jurors that parole was a crucial factor in the minds of the jurors and that if informed that Ramdass was

ineligible for parole that factor would have changed their vote.

As the Supreme Court stated in *Simmons* at pg. 147, the State may not create a false dilemma by advancing generalized arguments while at the same time preventing the jury from learning that the defendant will never be released on parole.

Justice O'Connor, with the Chief Justice and Justice Kennedy concurring, wrote that a capital case must satisfy the dictates of the due process clause and one hallmark of due process is defendant's ability to meet the state's case against him; therefore, when future dangerousness is the premise, due process requires that defendant not be sentenced to death on the basis of information he had no opportunity to deny, rebut or explain. *Eaton v. Commonwealth*, 244 Va. 236, 397 S.E.2d 385 (1990), *cert. denied*, ___ U.S. ___ (1991), *O'Dell v. Commonwealth*, 234 Va. 672, 364 S.E.2d 391, *cert. denied* 488 U.S. 891 (1988). The defendant must be permitted to introduce evidence pertaining to his parole ineligibility to the jury's attention.

Although Justice O'Connor would permit argument or instruction, she placed great credence in the questions of the jury, and would place even greater importance on the responses of the jurors subsequent to trial in this case.

Even the dissenters in *Simmons*, Justices Scalia, and Thomas might change their opinion knowing what the three jurors in *Ramdass* reported, since their dissents are based on the majority conclusion the parole eligibility

was a decisive factor. The dissenters felt such a conclusion was unwarranted. However, the dissenters found the parole ineligible rule reasonable. *Simmons,* at pg. 152.

This is not a new due process rule but is merely an additional example of the Supreme Court's insistence that because "death is different," state courts must admit all relevant mitigating evidence such as an unhappy upbringing and emotional disturbance, *Eddings v. Oklahoma,* 455 U.S. 104 (1982); psychological experts, *Ake v. Oklahoma;* 470 U.S. 68 (1985) or defendant's good behavior in prison. *Locket v. Ohio,* 438 U.S. 586 (1978).

Additionally, although juries are ordinarily presumed to follow the court's instructions, in some circumstances the risk that the jury cannot or will not follow instructions is so great and the consequences of failure so vital to the defendant, that the practical and human limitation of the jury system cannot be ignored. *Simmons* at pg. 147 *citing with approval Bruton v. United States,* 391 U.S. 123, 125 (1968)

Both rationales require the jury's sentence of death be set aside, and the case returned to the Circuit Court of Fairfax County.

Simmons, besides parole, addresses the related issue under *Gregg v. Georgia* 428 U.S. 153, 190 (1976) that accurate sentencing information is an indispensable prerequisite to a reasoned determination of whether a defendant will live or die. *Simmons,* opinion of Justice Souter, joined by J. Stevens, 512 U.S. ___, S.Ct ___ 129 L. Ed. 2d at 148. Thus, where there is a reasonable likelihood that a juror will misunderstand, an accurate instruction is required, and any conviction resulting from the refusal to give such

an instruction should be vacated as arbitrary, capricious and wanton. Id at 148 citing *Furman v. Georgia,* 408 U.S. 238, 249 (1972) (Douglas, J., concurring).

Bobby Lee RAMDASS

v.

COMMONWEALTH of Virginia.

No. 930693.

Supreme Court of Virginia.

Nov. 4, 1994.

Michael S. Arif, Burke (Leonard R. Piotrowski; Sharon B. Soloway, Martin, Arif & Soloway, on brief), for appellant.

Katherine P. Baldwin, Asst. Atty. Gen. (James S. Gilmore, III, Atty. Gen., on brief), for appellee.

Present: All the Justices.

WHITING, Justice.

Bobby Lee Ramdass pleaded guilty to the robbery of Mohammad Z. Kayani immediately preceding his trial for the capital murder of Kayani. The capital murder charge was predicated on Ramdass's alleged murder of Kayani in the commission of robbery while armed with a deadly weapon, Code § 18.2-31(4), and the use of a firearm in the commission of Kayani's murder, Code § 18.2-53.1. The trial court deferred action on Ramdass's guilty plea.

In a bifurcated jury trial conducted under the provisions of Code §§ 19.2-264.3 and-264.4, Ramdass was convicted of Kayani's capital murder. In the second phase of the trial, the jury fixed Ramdass's punishment at death, based upon the "future dangerousness" predicate of Code § 19.2-264.2.

Following consideration of a probation officer's report, the court imposed the death sentence fixed by the jury. The court also imposed a life sentence based upon its finding of Ramdass's guilt for Kayani's robbery and imposed the four-year sentence fixed by the jury for the firearms violation. We affirmed those judgments and the sentence to death. *Ramdass v. Commonwealth*, 246 Va. 413, 437 S.E.2d 566 (1993).

In a summary disposition, the Supreme Court granted Ramdass's petition for a writ of certiorari on June 20, 1994, vacated the judgment, and remanded the case to this Court "for further consideration in light of *Simmons v. South Carolina*, 512 U.S. 154, 114 S.Ct. 2187 [129 L.Ed.2d 133] (1994)." *Ramdass v. Virginia*, ___ U.S. ___, 114 S.Ct. 2701, 129 L.Ed.2d 830 (1994). Accordingly, by order entered July 29, 1994, we placed this case on our September 1994 docket with directions for appropriate briefing and argument.

We rejected Ramdass's contention in his earlier appeal that the trial court erred in not answering the jury's question, "If the defendant is given life, is there possibility of parole at some time before his natural death?" *Ramdass*, 246 Va. at 425, 437 S.E.2d at 573. We did so because of our established rule that "a jury should not hear evidence of parole eligibility or ineligibility because it is not a relevant consideration in fixing the appropriate sentence." *Id.* at 426, 437 S.E.2d at 573.

In *Simmons*, the Supreme Court held that when "future dangerousness" is an issue in the sentencing phase of a capital murder case, the jury is entitled to

information concerning the defendant's parole ineligibility. *Simmons*, 512 U.S. at ___, 114 S.Ct. at 2198. Hence, *Simmons* applies only if Ramdass was ineligible for parole when the jury was considering his sentence.

Code § 53.1-151(B1) establishes a person's ineligibility for parole as follows:

> Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole.

At the time that the jury was considering Ramdass's penalty on January 30, 1993, Ramdass was not ineligible for parole since he had only two "separate felony offenses" within the meaning of Code § 53.1-151(B1). They were:

(1) Ramdass's January 22, 1993, convictions and sentences for the armed robbery of two persons on August 25, 1992, at a Pizza Hut in Fairfax County. Since both convictions arose from the same transaction, they are considered as one felony offense under the express provisions of Code § 53.1-151(B1).

(2) Ramdass's convictions for Kayani's capital murder and robbery arising from the same transaction and, thus, considered as one felony offense under Code § 53.1-151(B1).

We do not agree with Ramdass's contention that his January 7, 1993, conviction by a jury of an armed robbery

in Alexandria also made him ineligible for parole under the statute. Judgment had not been entered on that verdict; therefore, it cannot be considered as a conviction under Code § 53.1-151(B1). *See Smith v. Commonwealth*, 134 Va. 589, 592-93, 113 S.E. 707, 709 (1922) (jury's verdict of conviction upon which no judgment had been entered not conviction within meaning of statute disqualifying person from holding public office). Since Ramdass was not ineligible for parole when the jury was considering his sentence, the *Simmons* decision does not affect his death sentence. Therefore, we will reaffirm the trial court's judgment, and reinstate the defendant's conviction and sentence to death.

Affirmed.

NO. ___

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1994

BOBBY LEE RAMDASS,
Petitioner

vs.

COMMONWEALTH OF VIRGINIA,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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* * *

used in the penalty phase, you must be convinced beyond a reasonable doubt that the defendant committed these crimes."

This is the same as the constitutional requirement of reliability which, at the very least, mandates that the state be required to satisfy the reasonable doubt standard of proof before it may rely upon evidence of unadjudicated misconduct.

The admission of evidence of past unadjudicated acts resulted in a sentence of death based upon facts that were necessary to its imposition but were not found beyond a reasonable doubt (Va. Code Ann. §19.2-264.4(C); *Watkins v. Commonwealth*, 229 Va. 469, 488, 331 S.E. 2d 422, 436 (1985)). The admission of such facts was, therefore, violative of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

III. WAS PETITIONER DENIED DUE PROCESS OR HIS EIGHTH AMENDMENTS RIGHTS BY THE STATE SUPREME COURT DECISION OF PAROLE INELIGIBILITY; THE REFUSAL OF THE TRIAL COURT TO INSTRUCT ON PAROLE STATUS OR THE TRIAL COURT'S REFUSAL TO RESPOND TO JURY INQUIRY AS TO PAROLE STATUS VIOLATED THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS?

Upon remand, the Virginia Supreme Court determined over defense argument to the contrary that defendant was eligible for parole.

Virginia Code §53.1-151(B) (1) establishes ineligibility for parole when a defendant has been convicted of *three* separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of these offenses when such offenses were not part of a common act, transaction or scheme.

The Virginia Supreme Court concluded that on January 30, 1993, when the jury was considering Ramdass' penalty, he did not meet these criteria because he had only two *separate* felony convictions within the meaning of the statute.

On January 22, 1993, Ramdass was convicted of the armed robbery of two people at a Pizza Hut. This involved two counts, two separate findings of guilty and two separate sentences, but since both convictions arose from the same transaction, they are considered as one felony offense for the purpose of parole, concluded the Virginia Supreme Court.

The Court further ruled that the capital murder conviction and robbery of the victim also amounted merely to one conviction, although Defendant pled guilty to the robbery just prior to trial, the jury was so informed, and the trial judge refused to sentence although requested to do so by the defense. These events also were the result of one transaction and counted only as one conviction, concluded the Virginia Supreme Court.[11]

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[11] Ramdass also pled guilty to a robbery charge on the day of the trial before the proceedings had begun. The judge refused to pass sentence until after the Commonwealth had produced evidence in the capital murder trial. He eventually gave a life sentence for the robbery charge. However, he refused to enter a finding of guilt and/or sentence Ramdass prior to jury deliberation in the capital murder.

The Court further found that a jury determination of guilty as to another clearly separate and distinct armed robbery in Alexandria, Virginia on January 7, 1993 did not count because the judge merely had not yet approved the jury's recommendation, citing *Smith v. Commonwealth*, 592-93 113 S.E. 707, 709 (1922).

The *Smith* case is simply inapplicable. The controversy there surrounded the meaning of "conviction" as referred to in Va. Code 1919, §2705.[12] The Court held that in cases concerning the removal of public officers, the Circuit Court requires a verdict *and* entry of judgment before employment may be terminated. *Id.* at 708 (emphasis added). This case has been used as precedent around the country, but only in instances where a public official is to be removed from office. See *State v. Levi*, 153 S.E. 587 (W. Va. 1930); *State v. Langer*, 256 N.W. 377 (N.D. 1934); *Keogh v. Wagner*, 246 N.Y.S.2d 269 (N.Y. 1964); *Slawick v. Folsom*, 410 A.2d 512 (Del. 1979); and *People v. Lisinski* 446 N.E.2d 1251 (Ill. App. Ct. 1983). The statute and its reasoning are no longer viable.

The Defendant was "convicted" on January 7, 1993, as the term is defined by this court. In *Deal v. United States*, 113 S. Ct. 1993 (1993), this Court grappled with the

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[12] Va. Code 1919, §2705, authorizes the Circuit Court to remove *state and county officers* convicted of any offense involving moral turpitude. This code section was subsequently changed to Va. Code §15.1-63 and later repealed altogether in 1975.

question of what is meant by "convicted. The statute in *Deal*, 18 USC § 924, was also a sentence enhancement statute.

This court held that "[i]n the context of §924(c)(1) we think it unambiguous that 'conviction' refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction" rather than meaning 'judgment of conviction.' " *Id*. at 1965. The court further rejected the notion that conviction means the entry of judgment of conviction:

> But if we give the term 'convicted' a meaning similar to what petitioner contends is meant by 'conviction, – as connoting, that is, the entry of judgment, which includes sentence – we . . . confront a situation in which the prescription of the terms of a sentence cannot be effective until it is too late, i.e., until after the sentence has already been pronounced.

Id. at 1997.

In fact, this Court has also stated that in " . . . some circumstances . . . a guilty plea alone [is] enough to constitute a 'conviction' . . . [because] like a verdict of a jury it is conclusive. More is not required; the court has nothing to do but give judgment and sentence." *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 112-13, 103, S. Ct. 986, 992, 74 L. Ed. 845 (1982) (citing *Kercheval v. United States*, 274 U.S. 220, 223, 47 S. Ct. 582 583, 71 L. Ed. 1009 (1927).

The Court further stated that the meaning of language cannot be determined in isolation, but must be

drawn from the context in which is it used. *Deal*, at 1996. Va. Code §53.1-151(B)(1) states:

> Any person convicted of three separate felony offenses of (i) murder, (ii) rape, or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivision (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole.

Taken in context, it is not apparent that any special meaning of "conviction" was intended to be assigned to the term. if the term could always be susceptible to interpretation, then the Court will be clogged with endless litigation over the meanings of each and every word that is subject to more than one definition. Judges and juries will be relegated to the duty of logophilologists.

Other state courts have reached similar results. In *State v. Lewis*, 564 So. 2d 765, that Court stated that the

> ordinary meaning of 'conviction' when used to designate a particular state of a criminal prosecution, is the confession of an accused in open court or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt.

Id. At 768 (citing 16 Corpus Juris 1266).

The common vernacular use of the phrase "to convict" means "to prove or declare guilty of an offense." The Random House Dictionary 202 (concise ed. 1980). In legal parlance, it is the "result of a criminal trial," "the act of convicting a person," or the *"finding [of] a person guilty*

by verdict of a jury." Black's Law Dictionary 403 (revised 4th ed. 1968) (emphasis added).

Simmons v. South Carolina, 512 U.S. ___, 114 S. Ct. 2187 (1994), held that the parole ineligibility status should be disclosed to the jury before deliberation. Without this disclosure, the jury was faced with "a false choice between sentencing the petitioner to death and sentencing him to a limited period of incarceration. This grievous misperception was encouraged by the trial court's refusal to provide the jury with accurate information regarding petitioner's parole ineligibility." *Id.*, 114 S. Ct. at 2193. In concerns of future dangerousness, "there may be no greater assurance of a defendant's future nondangerousness to the public than the fact that he will never be released on parole." *Id.* at ___, 114 S. Ct. at 2194.

Revelation that the Defendant became ineligible for parole two weeks after he was sentenced to die by a jury pursuant to the administrative function of approving a jury verdict previously imposed hardly serves to offset the grievous misconception of the jury that Defendant was or would be sentenced to a limited period of incarceration.

Nor does this decision by the Virginia Supreme Court do anything to support the heightened standard for reliability in death cases. To the contrary, it encourages inaccurate sentencing information and deprives the jury of the ability to make a reasoned determination of life or death. The jury was aware of the conviction, since it was introduced by the prosecution, and the sentence imposed by the other jury; but not its automatic result if approved by the judge.

The Supreme Court of New Mexico was one of the first courts to apply *Simmons*. In *Clark v. Tansy*, 882 P. 22d 527 (N.M. 1994), the Court overturned a capital conviction because the ineligibility for parole of the defendant was not disclosed to the jury prior to deliberation. *Id.* at 534. However, the court in dicta noted their belief that due process entitled the petitioner to disclose to a jury the minimum length of his sentence if other than death was imposed. The court further reasoned that once the length of incarceration facing a convicted felon is asserted by defendant to be mitigating evidence, the trial court must impose the sentence on noncapital charges before the jury deliberates on the capital charges. The court reasoned that the length of incarceration before parole is relevant information that should be presented to the jury upon the request of counsel and that such includes a request for sentencing on the noncapital offenses to which defendant pleads guilty. If such an instruction is not required, then the state has succeeded in securing a death sentence based on future dangerousness, while at the same time concealing from the jury the true meaning of its noncapital sentencing alternative. *Id.* at 533; *Simmons v. South Carolina*, 512 U.S. ___, 114 S. Ct. at 2193.

Death as a punishment is singular in its severity and finality. *See, e.g., Furman v. Georgia*, 408 U.S. 238, 286-91 (1972) (Brennan, J., concurring); *Id.*, at 306 (Stewart, J., concurring). Because of the qualitative difference between the death penalty and all other punishments, due process and the proscription against cruel and unusual punishment are not satisfied unless the procedures upon which a sentence of death may be rendered

are both certain and reliable. *See, e.g., Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

In *Lockett*, the Court emphasized that sentencing procedures "call[ ] for a greater degree of reliability when the death sentence is imposed." *Id.* at 604. In *Mills v. Maryland*, 486 U.S. 367, 376 (1988), the Court required a "greater certainty" that the sentencing jury's conclusions rested on proper grounds because the penalty imposed was death. This heightened need for sentencing reliability and certainty "makes it unthinkable for jurors to impose the death penalty when they harbor a reasonable doubt as to its justness." *State v. Bey*, 548 A.2d 887, 903 (N.J. 1988) (quoting *State v. Biegenwald*, 524 A.2d 130, 155 (N.J. 1987)).

The fact that Ramdass could be sentenced to "life imprisonment plus" is certainly a mitigating factor, particularly when the Defendant could be serving three (3) consecutive life sentences without parole.

IV. THE DECISION OF THE SUPREME COURT OF VIRGINIA VIOLATED THE SEPARATION OF POWERS DOCTRINE AND CONSTITUTED AN ABUSE OF DISCRETION.

According to the case law of the Supreme Court of the United States, the judicial branch of Virginia encroached on the duties of the executive branch when it defined the word "conviction" for parole eligibility.

The basis for the separation of powers doctrine lies in The Federalist, No. 47. There, James Madison wrote:

> No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny.

The Federalist, No. 47, p 324 (J. Cooke, Ed., 1961) (J. Madison).

Since then, the Supreme Court has had many opportunities to rule on this encroachment of power by one branch or another.

In *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983), the Court promulgated a test to see if the legislature had encroached on the executive branch: "Whether actions taken by either house are, in law and fact, an exercise of legislative power depends not on their form but upon whether they contain matter which is properly to be regarded as legislative in its character and effect. *Id.* at 952. Justice Powell expanded on this by saying that even though the boundaries between the branches are not fixed and definite, the court has not hesitated to enforce the doctrine of separation of powers when one branch has impaired or sought to assume a power central to another branch. *Id.* at 962-963 (Powell, J., concurring). Furthermore, the doctrine functionally could be violated in two ways. First, one branch may interfere impermissibly with the other's performance of its constitutionally assigned function. *Id.* at 963; See *Nixon v. Administrator of General Services*, 443 U.S. 425 (1977), *United States v. Nixon*, 418 U.S. 683 (1974). Second, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another. *Id.*;

See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Accordingly, the judiciary has taken actions that can properly be regarded as an assumption of executive power, both in its character and effect. The Parole Board is part of the executive branch of the Commonwealth of Virginia. Its rules and regulations are promulgated according to the executive's power of criminal prosecution. In promulgating these rules and regulations, the Parole Board has chosen its terms precisely and deliberately.

The judiciary, by defining the terms chosen by the Board, has usurped and exercised a purely executive power. *See generally, Morrison v. Olson*, 487 U.S. 654, 705 (1988) (Scalia, J., dissenting). Furthermore, the judicial branch has impermissibly interfered with and impeded the Parole Board's ability to apply the parole eligibility rules as it intended. The separation of powers doctrine was violated because it is the Parole Board, and the Parole Board alone, that can definitively state what meaning it intended to assign to the word "conviction." Thus, according to both the majority opinion and Justice Powell's concurrence, the judicial branch impermissibly encroached upon the executive branch and usurped a purely executive function.

According to case law of the Virginia Court of Appeals, the judicial branch of Virginia encroached on the duties of the executive branch when it defined the work [sic] "conviction" for parole eligibility.

In *Garrett v. Commonwealth*, 415 S. E. 2d 245 (1992), the court visited two questions. One, whether the trial

court had authority to determine whether defendant's robbery convictions were part of a common act transaction, or scheme, and thereby affect his eligibility for parole pursuant to Va. Code §53.1-151(B)(1); and two, whether the trial court erred in finding that the robberies for which the defendant was convicted were not part of a common act, scheme or transaction for purposes of determining parole eligibility pursuant to Va. Code §53.1-151(B)(1). *Id.* at 247.

The court held that the "trial court *did not* have authority in these circumstances to determine defendant's eligibility for parole." *Id.* (emphasis added). The court went on to state that "[b]oards of parole are 'given absolute discretion in matters of parole' . . . [and] courts cannot properly grant parole or determine eligibility for parole." *Id.* (quoting *Jackson v. Shields*, 438 F. Supp. 183, 184 (1977.)) The only caveat to this rule occurs in circumstances where the responsible agency has acted in an arbitrary or capricious manner, abused its discretion, or where the petitioner has been denied a constitutional right. *Id.* None of those exceptions are applicable to the present case.

Therefore, it appears the Virginia Supreme Court violated its own proscription not to determine parole eligibility. Further, they did so without an evidentiary hearing on the matter.

V. PETITIONER'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY REQUIRING HIM TO DISCLOSE TRIAL STRATEGIES IN OPEN COURT IN AN ATTEMPT TO SECURE EXPERT ASSISTANCE.

This Court has held that when a state brings its judicial power to bear against an indigent Defendant, it is a violation of both the Due Process and Equal Protection clauses of the Fourteenth Amendment not to appoint and pay for the "basic tools of an adequate defense." *Ake v. Oklahoma*, 470 U.S. 68, 78 (1985). The Virginia courts provide for a psychologist only – this is not the only basic tool of an adequate defense.

* * *

IN THE SUPREME COURT OF VIRGINIA

BOBBY LEE RAMDASS,
Prisoner Number 161453,
Petitioner,
v.
RONALD ANGELONE,
Director, Virginia
Department of
Corrections
and
J. D. NETHERLAND,
Warden, Mecklenburg
Correctional Center,
Respondents.

Record Number _____
(Filed Aug. 30, 1995)

PETITION FOR A WRIT OF HABEAS CORPUS

TO THE HONORABLE JUSTICES OF THE SAID COURT:

Comes Now the Petitioner, Bobby Lee Ramdass, by his undersigned appointed counsel, and represents to the Supreme Court of Virginia that he is illegally detained, under sentence of death, in the custody, control, and confinement of the Respondents and their agents and employees at the Mecklenburg Correctional Center of the Virginia Department of Corrections, located in Boydton, in the County of Mecklenburg, Commonwealth of Virginia, and that his confinement is in violation of the Constitution of the United States and the Constitution and the laws of the Commonwealth of Virginia.[1]

[1] Simultaneous with the filing of this Petition, Petitioner has filed a Motion to Determine Status of Petitioner's Rights

* * *

refusal gave the jury absolutely no standard by which to ensure the reliability of such testimony and prejudiced the Petitioner.

13. The Trial Court Erred In Failing To Instruct the Jury About Petitioner's Parole Eligibility In Violation Of *Simmons v. South Carolina.*

17. The prosecution improperly introduced evidenced concerning the Virginia parole system during the penalty state of trial (TR. 1/29/93 p. 130-131). The prosecution explained the differences between mandatory and discretionary parole and introduced evidence that the Petitioner received a seven-year sentence on a prior charge but was released on mandatory parole in only four years. The confusion in the minds of the jurors was quite apparent when they asked the court what Petitioner's eligibility for parole would be if he were given a life sentence. (TR. 1/29/93 p. 278).

18. In *Simmons v. South Carolina*, 114 S. Ct. 2187 (1994), the United States Supreme Court held that when the state raises the issue of future dangerousness of a defendant facing a capital charge, due process requires that the defendant be allowed to inform the jury if he will never be eligible for parole. Moreover, courts have long

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and Responsibilities With Respect to Habeas Corpus Proceedings, and Motion to Hold Proceedings in Abeyance, and Request for Leave to Amend Petition for Writ of Habeas Corpus, which Petitioner incorporates into the instant pleading by specific reference.

held that a capital defendant has a due process right to rebut evidence of the existence of aggravating circumstances in support of a death sentence. *Gardner v. Florida*, 430 U.S. 349 (1977); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Ake v. Oklahoma*, 470 U.S. 68 (1985). Also clear is the right to present evidence in support of a sentence less than death. *Lockett v. Ohio*, 438 U.S. 586 (1978); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Barclay v. Florida*, 463 U.S. 939 (1983) (plurality opinion). The Eighth Amendment requires that courts impose a heightened standard for reliability in sentencing a person to death. *Woodson v. North Carolina*, 428 U.S. 280 (1976) (opinion of Stewart, Powell and Stevens, JJ.); *Godfrey v. Georgia*, 446 U.S. 420 (1980); *Mills v. Maryland*, 486 U.S. 367 (1988); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Beck v. Alabama*, 447 U.S. 628 (1980).

19. As Justice Scalia noted in his dissent in *Simmons*, the rule adopted in *Simmons* is "at least as sweeping as this: that the Due Process Clause overrides state law limiting the admissibility of information concerning parole whenever the prosecution argues future dangerousness." *Simmons*, 114 S. Ct. at 2203 (Scalia, J., dissenting). Thus, if juries must be informed of a defendant's permanent parole ineligibility, they must also be informed of a defendant's ineligibility for parole for a substantial period of time, because such evidence is as relevant to future dangerousness as evidence of permanent ineligibility. Differences in the length and permanence of the ineligibility go to the weight of the evidence, not to its relevance.

20. In addition, evidence of parole eligibility must be admitted in order to ensure the reliability of the death

sentence. Jury confusion concerning the actual length of a sentence of life imprisonment distorts the choice facing the jury and undermines the reliability of its decision to sentence a defendant to death rather than life imprisonment. As Justice Souter noted in his concurring opinion in *Simmons*, this confusion is contrary to the Eighth Amendment's "heigthened standard for reliability in the determination that death is the appropriate punishment in a specific case," which requires that jurors be "instructed on the proper meaning of sentencing terms whenever there is a reasonable likelihood of misunderstanding." *Simmons*, 114 S. Ct. at 2198 (Souter, J., concurring). Moreover, fundamental respect for humanity requires that defendants facing the death penalty be permitted to present any evidence that they consider mitigating. *See, e.g., Skipper, Eddings, Lockett.*

21. In Petitioner's case, because the jury was not instructed on the true meaning of a sentence of life imprisonment, the jurors improperly speculated among themselves about when Petitioner might be released from prison. This is quite obvious considering the jury's question to the court and the fact that some jurors later stated that they would have considered a sentence of life imprisonment if they had known that Petitioner would not have been eligible for parole in his lifetime.

14. The Trial Court Erred In Denying The Defendant's Motion For the Appointment Of An Investigator.

22. On December 8, 1992, trial counsel moved for the appointment of an investigator to assist in the preparation of the Petitioner's case. This motion was improperly denied, which seriously impaired trial counsel's ability to gather the evidence necessary to put on a proper defense in the guilt phase and penalty phase.

23. This trial took place a little more than four months after Petitioner's arrest. It is quite obvious from the record that trial counsel's investigation was incomplete, as the lack of investigative support rendered trial counsel unable to adequately interview prosecution witnesses or develop suitable mitigation evidence for use during the penalty phase.

15. Petitioner Was Prejudiced By These Errors.

24. Petitioner was prejudiced by the trial court's errors set forth above in violation of his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 5, 8, 9, and 11 of the Virginia Constitution. But for the trial court's errors, there is a reasonable likelihood that the Petitioner would not have been convicted of capital murder and sentenced to death.

D. THE VIRGINIA SUPREME COURT'S PROPORTIONALITY REVIEW OF PETITIONER'S CASE WAS INADEQUATE, IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE VIRGINIA AND UNITED STATES CONSTITUTIONS.

This Claim is evidenced by the following facts:

1. All other allegations in this Petition are incorporated into this Claim by specific reference.

2. Section 17-110.1 of the Code of Virginia require the Supreme Court of Virginia to review all capital murder cases resulting in a death sentence to determine "whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." This statutory right creates a liberty interest under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 11 of the Virginia

* * *

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday *the* 18th *day of* March, 1996.

Bobby Lee Ramdass,

Petitioner,

against Record No. 951594

Director of the Department of Corrections, et al.,

Respondents.

Upon a Petition for a Writ of Habeas Corpus

Applying the rule in *Slayton* v. *Parrigan*, 215 Va. 27, 205 S.E.2d 680 (1974), to petitioner's allegations B(1) through (8), C(2), C(4) through (9) and D; the rule in *Hawks* v. *Cox*, 211 Va. 91, 175 S.E.2d 271 (1970), to petitioner's allegations C(1), C(3) and C(10) through (14); and finding no merit in petitioner's remaining allegations, the Court is of opinion that the writ of habeas corpus should not issue as prayed for. On further consideration whereof, the Court denies petitioner's motion to remand for evidentiary hearing. It is therefore ordered that the said petition be dismissed.

A Copy,

Teste:

David B. Beach, Clerk

By: /s/ Patricia Illegible
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

BOBBY LEE RAMDASS,

Petitioner,

v. Action No. 2:96cv831

J.D. NETHERLAND, Warden,
Mecklenburg Correctional Center,

Respondent.

INITIAL PETITION FOR A WRIT OF HABEAS CORPUS, SUBJECT TO AMENDMENT

John M. Ryan (Va. Bar #4301)
F. Nash Bilisoly (Va. Bar #19066)
VANDEVENTER, BLACK, MEREDITH & MARTIN, L.L.P.
500 World Trade Center
Norfolk, Virginia 23510-1699
(757) 446-8600

Michele J. Brace (Va. Bar #36748)
VIRGINIA CAPITOL REPRESENTATION RESOURCE CENTER
Post Office Box 506
Richmond, Virginia 23204-0506
(804) 643-6845

* * *

pursuant to mitigating factors in cases."[9].2 (TR 4/02/93 p. 66). The court imposed the death sentence without comment. (TR 4/02/93 p. 74).

III. REASONS FOR GRANTING THE WRIT

57. Petitioner's conviction of capital murder and his sentence of death were obtained in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as more fully alleged in the following claims.[10] To the extent that counsel rendered ineffective assistance in violation of the Sixth Amendment, there is a reasonable probability that, absent counsel's deficient performance, the result would have been different with respect to guilt and/or sentence. All other constitutional violations were harmful in that they had a substantial and injurious effect or influence on the determination of guilt and/or sentence.

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[9] Trial counsel when [sic] on to argue.

> If they [the jury] had the right and they should have the right in this case because it's denying to the jury a crucial litigating factor which we're not supposed to be doing anymore. we're supposed to be able to present under the Constitution and under Ackey and Locket, we're supposed to be able to present to the Court all mitigating factors. It's surely unusual and surely strange when saying that the person is going to spend the rest of their life in prison as a mitigating factor, but under these circumstances, it surely and certainly is a mitigating factor.

(TR 4/02/93 p. 67).

[10] Petitioner incorporates all allegations in this petition into each claim, regardless whether the claim includes a specific reference to such incorporation.

A. The Court's Failure to Allow Consideration of Mr. Ramdass' Parole Ineligibility Violated his Rights under the Eighth and Fourteenth Amendments.

This claim is evidenced by the following facts:

58. All other allegations in this petition are incorporated into this claim by specific reference.

59. The United States Supreme Court has repeatedly emphasized that "the penalty of death is qualitatively different from a sentence of life imprisonment, however long." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). In *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977), the Court recognized that,

> From the point of view of the defendant, it [the death penalty] is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.

The qualitative difference between death and other penalties mandates a greater degree of reliability when a death sentence is imposed. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

60. It is an elemental due process requirement that a defendant not be sentenced to death based upon evidence which he did not have an opportunity to deny or explain. *Gardner v. Florida*, 430 U.S. 349, 362 (1977). In addition to

the due process right to rebut, the Eighth Amendment requires that capital sentencing jurors not be precluded from considering any mitigating factor offered by the defendant as a basis for a sentence less than death. *Lockett*, 438 U.S. at 604. Mr. Ramdass was not permitted an opportunity to deny or explain the evidence presented by the prosecution with regard to Mr. Ramdass' future dangerousness. Similarly, the trial court prevented Mr. Ramdass from presenting mitigating evidence and argument of his parole ineligibility.

61. Before a defendant is eligible to be sentenced to death in Virginia, the sentencer must find either that there exists a "probability that the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society" ("future dangerousness"), or that the capital offense was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim ("vileness"). Va. Code § 19.2-264.2 The prosecution bears the burden of proving aggravating circumstance beyond a reasonable doubt. Va. Code § 19.2-264.4(C).

62. The prosecution did not oppose trial counsel's *motion in limine* to exclude vileness as a predicate for a death sentence and agreed that Mr. Ramdass' death sentence would not be pursued on that basis. (TR 1/29/93 p. 7-8.) Thus, Mr. Ramdass' future dangerousness, his "continuing serious threat to society," was the sole aggravating circumstance upon which the jury could find that Mr. Ramdass was eligible for a sentence of death. (TR 1/29/93 p. 8.) Absent proof beyond a reasonable doubt that there was a probability that Mr. Ramdass would

constitute a continuing serious threat to society. Mr. Ramdass could not be sentenced to death.

63. If the sentencer finds at least one aggravating factor beyond a reasonable doubt, the threshold test for death *eligibility* is satisfied, and the sentencer must then decide whether a death sentence is *appropriate*. For this purpose, the sentencer considers all of the evidence, including the mitigating evidence.

64. During the sentencing phase of the capital murder trial, the prosecution repeatedly introduced improper evidence concerning the Virginia parole system. (TR 1/29/93 pp. 85-86, 130-31.) The prosecution explained the difference between mandatory and discretionary parole and introduced evidence that Mr. Ramdass received a seven-year sentence on a prior charge but was released on mandatory parole in only four years.

65. The confusion in the jurors' minds became apparent when, in the midst of their deliberations following the sentencing phase, they sent a question to the court requesting advice as to the effect of Mr. Ramdass' parole eligibility on a life sentence. The jurors inquired, "If the defendant is given life, is there a possibility of parole at sometime before his natural death?" (TR 1/29/93 at p. 278.) The court refused to answer the question. Instead, the trial court instructed the jury that "If you find the defendant guilty, you should impose such punishment as you feel is just under the evidence and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards." (TR at p. 279.)

66. At that time, Mr. Ramdass had been judged guilty of and sentenced to 76 years for the Pizza Hut

Restaurant robbery crimes; had been found guilty by a jury of the Domino's robbery, with the jury's sentences fixed at 18 years; had plead guilty to the robbery of the 7-Eleven convenience store and was awaiting sentencing and had been found guilty of the capital murder. Thus, at that time, Mr. Ramdass was ineligible for parole, and the court's instruction violated Mr. Ramdass' Eighth and fourteenth Amendment rights.

(1) The Legal Standards

67. In *Simmons v. South Caroline*, 512 U.S. ___, 114 S. Ct. ___, 129 L. Ed. 2d 133 (1994), the Supreme Court recognized that when the prosecution argues a capital defendant's future dangerousness, the trial court's failure to adequately instruct a capital jury on the significance of a defendant's ineligibility for parole on a life sentence violates the defendant's constitutional rights. In *Simmons*, after the prosecution raised the specter of the defendant's future dangerousness to society, the jury sent a note to the judge asking a single question: "Does the imposition of a life sentence carry with it the possibility of parole?" *Simmons*, 129 L. Ed. 2d at 140. Over the defendant's objections, the trial court instructed the jury not to consider parole or parole eligibility in reaching its verdict: "Do not consider parole or parole eligibility. That is not a proper issue for your consideration. The term 'life imprisonment' and 'death sentence' are to be understood in their plan (sic) and ordinary meaning." *Id.* Deprived of information about the meaning of a life sentence, the jury returned a sentence of death. The Supreme Court found that the prosecution had "succeeded in securing a death

sentence on the ground, at least in part, of petitioner's future dangerousness, while at the same time concealing from the sentencing jury the true meaning of its non-capital sentencing alternative, namely, that life imprisonment meant life without parole." This, the court found, was a clear violation of the defendant's due process right to rebut. In this case, as in *Simmons*, the trial court similarly refused to instruct the *Ramdass* jury on the meaning of a life sentence under Virginia law.

68. The Supreme Court's decision in *Simmons* reaffirmed the well-established constitutional principle that a defendant may not be sentenced to death based on evidence which he did not have an opportunity to deny or explain. Fundamental due process requires that a defendant have the opportunity to rebut evidence used against him in a capital proceeding. *Simmons*, 129 L. Ed. 2d at 141-43 (*citing Gardner*, 43 U.S. at 362, *Skipper v. Lockhart*, 476 U.S. 1, 5n.1 (1986)). The Court found that parole ineligibility was unquestionably relevant to rebutting the prosecution's claim of future dangerousness, declaring that

> [i]n assessing future dangerousness, the actual duration of the defendant's prison sentence is indisputably relevant. Holding all other factors constant, it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society that a defendant who is not. Indeed there may be no greater assurance of a defendant's future non-dangerousness to the public than the fact that he never will be released on parole. The trial court's refusal to apprise the jury of information so

> crucial to its sentencing determination, particularly when the prosecution alluded to the defendant's future dangerousness in its argument to the jury, cannot be reconciled with our well-established precedents interpreting the Due Process Clause.

Simmons, 129 L. Ed. 2d at 142-43. The Fourteenth Amendment does "not tolerate placing a capital defendant in a straitjacket by barring him from rebutting the prosecution's arguments of future dangerousness with the fact that he is ineligible for parole under state law." *Id.* at 144n.5. The *Simmons* defendant was repeatedly denied an opportunity to inform the jury that he never would be released on parole. Being denied a "straight answer" about parole eligibility, the jury was left to speculate about the defendant's future dangerousness.

69. The Eighth Amendment also compels that capital sentencing juries, faced with the dilemma of deciding between life and death, be informed of a defendant's parole ineligibility. *Id.* at 147-48. (Souter, J., joined by Stevens, J. concurring). The heightened standard of reliability applied to capital sentencing requires that accurate sentencing information be provided as "an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die." *Id.* (citing *Gregg v. Georgia*, 428 U.S. 153, 190 (1972)). Whenever, as in *Simmons*, there is a reasonable likelihood that jurors misunderstand the effect of sentencing terms, particularly where a request for clarification of the meaning of the sentencing alternatives has been refused by the trial court, the death sentence "should be vacated as having been 'arbitrarily or capriciously' and 'wantonly

and . . . freakishly imposed.' " *Id.* (citing *Furman v. Georgia*, 408 U.S. 238, 249 (1972)).

70. The United States Supreme Court remanded Ramdass, in light of *Simmons*. *Ramdass v. Virginia*, 512 U.S. ___, 114 S. Ct. 2701, 129 L. Ed. 2d 830 (1994). On remand, the Virginia Supreme Court arbitrarily determined that Mr. Ramdass had not been "convicted" of three qualifying felonies and therefore was not statutorily ineligible for parole under Virginia Code § 53.1-151(B1). *Ramdass v. Commonwealth*, 248 Va. 518, 520-21, 450 S.E.2d 360, 361 (1994) *cert. denied*, 115 S. Ct. 1800 (1995).

71. Sections 53.1-151(B1) provides that a prisoner is ineligible for parole consideration if he has three convictions for (i) murder, (ii) rape, or (iii) robbery by presentation of firearm or using deadly force. Offenses occurring as part of the same transaction (for example, the robbery of the 7-Eleven store and the murder of Mr. Kayanni) do not count as separate convictions for purposes of § 53-151(B1). The Court reasoned that while Mr. Ramdass' Pizza Hut convictions and the combined guilty plea to robbery and guilty verdict in the capital murder trial were qualifying felony "convictions" under § 53.1-151(B1), the guilty verdict in connection with the Domino's Pizza robbery did not qualify because the jury's sentence for that offense had not yet been imposed and final judgment had not been entered. *Ramdass*, 248 Va. at 520. This arbitrary and capricious interpretation of the facts and the law violated Mr. Ramdass' Fourteenth Amendment due process rights and circumvented the clear constitutional mandate of *Simmons* and the settled law that dictated the result in *Simmons*.

(2) The Virginia Supreme Court's Arbitrary Refusal to Apply Simmons v. South Carolina Based on its Holding That Mr. Ramdass Was Not Statutorily Ineligible for Parole under Virginia Code § 53.1-151 Violated Mr. Ramdass' Due Process Rights.

This claim is evidenced by the following facts:

72. All other allegations in this petition are incorporated into this claim by specific reference.

73. Where state law creates a right which involves a person's liberty, the individual possessing this right is entitled to federal due process to "insure that the state created right is not arbitrarily abrogated." *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). Virginia statutes governing parole determinations have been held to confer liberty interests protected by the Due Process Clause. *Franklin v. Shields*, 569 F.2d 784 (4th Cir. 1977) *cert. denied*, 435 U.S. 1003 (1978). This Court has recognized that "logic dictates that if a prisoner has a protectable liberty interest in being considered for parole, then he has an equally protectable interest in being considered for parole eligibility." *Krawertz v. Murray*, 742 F.Supp. 304 (E.D. Va. 1990) (Clarke, J.). The result does not vary depending on whether it is in an individual's interests to be determined eligible or ineligible for parole. Thus, the determination of whether Mr. Ramdass was ineligible for parole must meet minimum federal due process standards. The Virginia Supreme Court's determination that Mr. Ramdass was not ineligible failed to comply with those standards. In particular:

a. *The Virginia Supreme Court's decision was ultra vires.*

74. When determining on remand that Mr. Ramdass was not statutorily ineligible for parole at the time of his original trial, the Virginia Supreme Court was acting outside the scope of authority granted by Virginia Code § 53.1-151, and thus its determination was *ultra vires.* Under Virginia Code § 53.1-151(B1), determinations of parole ineligibility are to be made by the Virginia Department of Corrections, which is an agency of the executive branch of the government.[11] Virginia's courts cannot properly determine parole eligibility. *Garrett v. Commonwealth*, 14 Va. App. 154, 157, 415 S.E.2d 245, 247 (1992); *see also Jackson v. Shields*, 438 F.Supp. 183, 184 (W.D. Va. 1977). It is within the exclusive province of the Virginia Department of Corrections to make such determinations. *Id.* A court may not intervene absent a showing that the agency's parole eligibility determination was "arbitrary or capricious," an abuse of the agency's discretion or in denial of a constitutional right. *Id.* in *Ramdass,* the Virginia Court was not dealing with such a case.

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[11] The Department of Corrections makes the first determination of parole eligibility. This determination may be superseded by a judgment of the Parole Board Va. Code § 3.1-151(B1). The statute plainly provides for no further review beyond the Parole Board.

b. *The Virginia Supreme Court's decision was arbitrary*

75. The Supreme Court's determination in its remanded Ramdass opinion, *Ramdass v. Commonwealth,* 248 Va. 518 (1994) *cert. denied,* 115 S. Ct. 1800 (1995) (*Ramdass2*), that Mr. Ramdass was not ineligible for parole was unconstitutionally arbitrary and violated Mr. Ramdass' constitutional due process guarantees. Relying on the 1922 case of *Smith v. Commonwealth,* 134 Va. 589, 592-93, 113 S.E. 707, 709 (1922), the court held that since judgment had not yet been entered on the January 7th Domino's Pizza robbery jury verdict, that case could not count as a conviction rendering Mr. Ramdass ineligible for parole under Virginia Code § 53.1-151. The inconsistency of the court's decision, the failure of the court to recognize contrary precedent, and the decision's irreconcilability with the plain language of the statute illustrate the arbitrary nature.

i. The decision was internally inconsistent

76. The Virginia Supreme Court's opinion in *Ramdass 2* contradicts itself. The court states that Virginia's statute regarding ineligibility for parole requires three separate qualifying criminal incidents. According to the state court's opinion, Mr. Ramdass' conviction for the Pizza Hut robbery for which he was sentenced on January 22, 1993, constituted one "felony offense." His conviction for Mr. Kayanni's capital murder and the 7-Eleven robbery in the same transaction constituted a second

qualifying "felony offense." However, Mr. Ramdass' January 7, 1993 jury conviction for armed robbery of Domino's Pizza was not a qualifying "felony offense" within the meaning of the statute because, although Mr. Ramdass had been found guilty, judgment had not been entered on the verdict.

77. This is arbitrary and internally inconsistent. The procedural posture of the Domino's Pizza robbery was identical to that of the 7-Eleven robbery/capital murder. In both cases, the jury had determined that Mr. Ramdass was guilty of the crime. In both cases, judgment had not been entered. The Domino's Pizza robbery was arguably closer to entry of judgment than the capital murder case because the jury had already fixed a sentence for that robbery.

78. The Virginia Supreme Court correctly recognized that the 7-Eleven robbery/capital murder offense counted as a "felony offense" for purposes of Section 53.1-151(B1). It arbitrarily refused to accord the same status to the identically situated Domino's Pizza robbery. Thus, the Virginia Supreme Court, either in spite of or because of the *Smiths precedent, concluded that two procedurally identical criminal proceedings were the opposite of one another for the purposes of the statute. The state court's decision in Ramdass 2* is irrational; it is unconstitutionally arbitrary and denied Mr. Ramdass due process of law.

ii. The decision ignored contrary Virginia authority

79. In *Smith v. Commonwealth*, 134 Va. 589, 117 S.E. 707 (1922), the court held that a guilty plea or jury verdict

was insufficient to count as a "conviction" for the purpose of a statute providing for the discharge of a constitutional officer "convicted of an act constituting a violation of any penal statute involving moral turpitude." Instead, entry of a final judgment was required before a Commonwealth Attorney could be terminated for trafficking in white slavery. The Virginia Supreme Court's failure to recognize other more recent interpretations of the term "conviction" evidences the arbitrary nature of its decision. In *Fields v. Commonwealths*, 5 Va. App. 229, 361 S.E.2d 359 (1987), for example, the Virginia Court of Appeals declined to apply the *Smith* interpretation of "convicted" in the context of witness impeachment. In *Fields*, the Court of Appeals held that where a witness has plead guilty, he has the status of a convicted felon, even though no judgment has yet been entered on the verdict. The *Fields* court acknowledged *Smith*, but stated that the older case must be limited to its facts.

iii. The decision contravenes the "plain language" of the Statute

80. The Virginia Supreme Court's definition of a "conviction" in *Ramdass 2* is at odds with the legislature's use of the term in the statute itself. Paragraph A of the parole eligibility statute concerns the parole *eligibility* status of non-capital offenders and expressly applies to "every person *convicted of a felony* and *sentenced* and *committed* by a court." Va. Code Ann. § 53.1-151A. The language reflects a clear distinction between conviction and

sentencing. Paragraph B of the same statute deals specifically with parole *ineligibility* (the "three strikes provision"), both in the cases of capital and non-capital crimes. The terms "sentenced" and "committed" are excluded.[12] Applying the "plain meaning" rule of statutory construction to the clause at issue, sentencing is clearly not a part of the Virginia three strikes statute. *See Krawetz v. Murray*, 742 F. Supp. 304, 306-07 (E.D. Va 1990) (Clarke, Jr.) (considering Va. Code § 53.1-151A).

81. The definition of a "conviction" announced by the Virginia Supreme Court in *Ramdass 2*, requiring both a guilt determination and the imposition of a sentence renders the statutory language redundant. Had the Virginia legislature intended "conviction" to include "sentencing" in the "three strikes" portion of the statute, it would have used the same language found in Paragraph A. The Virginia Supreme Court arbitrarily ignored clear statutory language and thus deprived Mr. Ramdass of due process. Without explanation, the statutory use of the term is given an expansive interpretation serving arbitrarily to deprive Mr. Ramdass of what clearly was a central sentencing factor. This interpretation was arbitrary and Mr. Ramdass was denied his right to due process.

82. A logical construction dictates the same result. Subsection A addresses those who are in prison and when they can be released by the Department of Corrections. Subsection B focuses solely on convictions; once

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[12] For purposes of state law, the sentencing occurs upon entry of judgment. Thus, the terms "sentencing" and "entry of judgment" are equivalent.

convicted of the three "strikes," questions of sentencing and commitment are irrelevant.

83. The state court's arbitrary and illegal conclusion that Mr. Ramdass was statutorily eligible for parole had a substantial and injurious effect or influence on the sentencing decision. *See Brecht v. Abrahamson*, 113 S. Ct. 1710 (1993) (defining standard of harmless error applied in habeas corpus proceedings to findings of constitutional violation); *O'Neal v. McAninch*, 115 S. Ct. 992 (1995) (if evidence of harm is in equipoise, court must rule in favor of petitioner).

(3) Due Process and Eighth Amendment Rights Mandate that the Sentencer Be Allowed To Consider Mr. Ramdass' Parole Information.

84. During the sentencing phase of the capital murder trial, on January 29, 1993, the jury questioned the effect of Mr. Ramdass' parole status on a life sentence. The jurors inquired, "If the defendant is given life, is there a possibility of parole at sometime before his natural death?" (TR 1/29/93 at p. 278.) Over Mr. Ramdass' objection, the court refused to provide the information requested. Instead, the trial court instructed the jury that "If you find the defendant guilty, you should impose such punishment as you feel is just under the evidence and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards." (TR 1/29/93 at p. 279.)

85. Assuming without conceding, that Mr. Ramdass was not statutorily ineligible for parole on January 29, 1993, he was, nevertheless, for all intents and purposes effectively ineligible for parole. The trial court's failure

instruct [sic] the jury on Mr. Ramdass' effective parole ineligibility forced the jury to speculate on the true effect of a life sentence and rendered its sentence unconstitutionally unreliable.

86. Thus, when the jury asked the Fairfax Circuit Court whether there was a "possibility of parole" in the event of a life sentence, there was, in fact, no possibility that Mr. Ramdass would ever be released on parole. Based upon other jury verdicts, outstanding indictments for crimes that Mr. Ramdass had admitted in his penalty phase testimony and to which he intended to plead guilty, and testimony provided in open court during sentencing, it was true beyond question that Mr. Ramdass would never be eligible for parole. Mr. Ramdass was for all purposes effectively, if not statutorily, "ineligible for parole."

87. The jury did not ask whether Mr. Ramdass was "statutorily" eligible for parole "today." They asked whether he would be eligible for parole " . . . at some time before his natural death." The only accurate answer to the jury's question was, clearly, "no, he will not be eligible for release in the future." The precise rationale of *Gardner, Skipper,* and *Simmons* mandated that Mr. Ramdass be allowed to rebut the prosecution's case for future dangerousness with accurate information about his effective parole ineligibility. There was no question that by the time the Department of Corrections was called upon to assess Mr. Ramdass' parole status, he would be *de jure* ineligible for parole, even if on the day the jury asked the question, he was only *de facto* ineligible for parole. In the terms of reliable sentencing requirements in this case, the

line that was drawn between Mr. Ramdass' effective ineligibility and Virginia's statutory "ineligibility" is unreasonable and unconstitutionally arbitrary.

88. Since the decision in *Furman v. Georgia,* 408 U.S. 238 (1972), holding that state death penalty schemes were in violation of the Eighth and Fourteenth Amendments, the Supreme Court has attempted to limit the risk of arbitrary and capricious imposition of the death penalty. The need for reliability in the sentencer's determination that death is the appropriate punishment has been stressed by the Supreme Court in numerous cases. *See, e.g., Skipper,* 476 U.S. at 4; *Ake v. Oklahoma,* 470 U.S. 68, 83, 84 (1985); *Lockett v. Ohio,* 438 U.S. 586 (1978); *Woodson v. North Carolina,* 428 U.S. 280, 305 (1976).

89. The *Ramdass* jury, confronted with the difficult decision between life and death sentences, was deprived of information about the meaning of a life sentence necessary to reach a constitutionally reliable sentencing determination. Without accurate information about Mr. Ramdass' parole status, the jury was left to speculate over the true meaning of a life sentence.

90. Parole eligibility and the likely duration of incarceration are key factors considered by jurors in their sentencing determinations. Studies have demonstrated that Virginia citizens and jurors vastly underestimate the period of incarceration represented by a life sentence. William J. Bowers & Benjamin D. Steiner, *The Pernicious Illusion of Early Release for First Degree Murderers Not sentenced to Death, presented at* the 1996 American Society of Criminology Meeting, Chicago, Ill. (November 20-23,

1996) (hereinafter *The Pernicious Illusion*) (copy of findings attached as Exhibit E); National Legal Research Group, Jury Research and Trial Simulation Services, *Report on Jurors' Attitudes Concerning the Death Penalty* (Dec. 6, 1988) (hereinafter *Jurors' Attitudes*) (unpublished report attached as Exhibit F); *see also* Greenberg/Lake, The Analysis Group, Inc., *National Omnibus Study* (Mar. 1, 1993) (hereinafter *Omnibus Study*) (copy attached as Exhibit G).

91. A survey of capital jury eligible residents of Prince Edward County, revealed that the potential jurors believed that it is unlikely that a defendant sentenced to death would actually be executed. National Legal Research Group, *Jurors' Attitudes* at 2-3. The amount of time a defendant would serve if he were sentenced to life imprisonment for intentional murder during an armed robbery was a major concern when the potential jurors chose between life and death sentences. In the survey, a defendant sentenced to life imprisonment for intentional murder in the course of an armed robbery was viewed as likely to serve only 10 years before being released on parole. *Id.* at 3. When the question posed set the minimum time served with a life sentence at no parole, a majority of individuals said that they would be less likely to sentence the defendant to death. *Id.* at 4-5. Finally, the survey demonstrated that courts' attempts to remove parole eligibility from the jury's consideration are ineffective. *Id.* at 7. A majority of those surveyed said that they would still consider the length of time to be served in arriving at their sentencing decision, even if the trial judge specifically instructed them to the contrary. *Id.*

92. Another survey, conducted shortly after Mr. Ramdass was sentenced to death, revealed most individuals believe that despite the imposition of a "life" sentence potential jurors believe capital defendants were likely to be paroled or released back into society after serving twenty years or less in prison. Greenberg/Lake, *National Omnibus Study* at 1. Support for the death penalty dropped from a seventy-seven percent majority to a forty-nine percent minority when those surveyed were given the option of life without parole. *Id.* at 2-3.

93. A recent quality of life survey revealed that while 83% of the Virginians surveyed support the death penalty generally, the figure drops to a slim majority of 57% when the jurors were informed that the life sentence would be without the possibility of parole for a twenty-five year period, with restitution to victims' families. Center for Survey Research, Virginia Polytechnic Institute, *Quality of Life in Virginia 9*, A4 (1996) (copy attached as Exhibit H).

94. Virginia has abolished parole for capital offenses committed after January 1, 1995. Va. Code Ann. § 53.1-151(b) (Supp. 1994). Capital sentencing determinations made by juries, since being given the alternative of life without possibility of parole, reflect the importance of parole eligibility on sentencing decisions. When faced with the choice between life sentences without possibility of parole and death sentences, Virginia juries have overwhelmingly chosen lie sentences. On information and belief, only one or two capital defendants have been sentenced to death for capital crimes committed after the statute became effective on January 1, 1995.

95. The prosecution premised its attempt to procure the death penalty solely upon Mr. Ramdass' future dangerousness. (TR. 1/29/93 p. 8.) When the jury attempted to ascertain whether Mr. Ramdass could be paroled if given a life sentence, (TR. 1/29/93 p. 278), the trial judge refused to provide that information, (TR. 1/29/93 p. 279). Without accurate information necessary to determine the threat posed by Mr. Ramdass to society, the jury was left to speculate whether a life sentence meant "life without parole or something else." *See Simmons,* 129 L. Ed. 2d at 144. Believing it was the only option that would adequately protect society, the jury chose death. As jurors are likely to rely upon inaccurate perceptions regarding parole when determining the appropriate sentence, the introduction of accurate information to rebut future dangerousness is a constitutional right to which capital defendants are absolutely entitled. Mr. Ramdass was denied this fundamental right.

96. A death sentence cannot stand where it is based on misinformation because it violates the Eighth Amendment's prohibition against cruel and unusual punishment. *Johnson v. Mississippi,* 486 U.S. 578 (1988). Likewise, it is a denial of Eight and Fourteenth Amendment rights to allow jurors to operate under their known misconceptions and misinformation on parole in assessing the appropriate punishment of life or death. There can be no reliability in sentencing under such circumstances. *See also, Caldwell v. Mississippi,* 472 U.S. 320 (1985) (prosecutor's misinformation concerning jury's role in imposing death penalty rendered sentence invalid).

97. The trial court's refusal to instruct the jury on Mr. Ramdass' effective parole ineligibility violates the

heightened reliability standards constitutionally required for capital sentencing. In *Green v. Georgia,* 442 U.S. 95, 97 (1980), the United States Supreme Court struck down Georgia's mechanical application of its hearsay rule at the capital sentencing stage because "the excluded [evidence was] highly relevant to a critical issue in the punishment phase of the trial and substantial reasons [existed] to assume its reliability."

98. Therefore, the trial court's exclusion of information about parole clearly affected the reliability of the *Ramdass* jury's sentencing determination and constituted a violation of the due process clause of the Fourteenth Amendment as well as the Eighth Amendment prohibition against cruel and unusual punishment.

99. Moreover, under the Eighth and Fourteenth Amendments, death penalty schemes must also allow sentencing juries to consider, as mitigating factors, any aspect of the defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. *See Lockett v. Ohio,* 438 U.S. 586, 604 (1978). *Lockett* and its progeny explicitly prohibit states from limiting the sentencer's consideration of any relevant circumstance that could "cause it to decline to impose the death sentence." *McClesky v. Kemp,* 481 U.S. 279 (1987). The Supreme Court's only limitation of evidence in mitigation is that it not be "[irrelevant] evidence concerning other persons, crimes, and events, [that are] completely distinct." *Lockett,* 438 U.S. at 604. This limitation, however, does not disallow evidence on parole because such evidence *is* relevant under *Lockett.*

100. Just as the prosecution is allowed to introduce aggravating evidence of unadjudicated criminal behavior in support of future dangerousness, the Constitution mandates that Mr. Ramdass be allowed to present all relevant mitigating evidence from which the jury may decide to impose a life, rather than death, sentence. Because information about parole is clearly information from which a jury could conclude that a life sentence is appropriate, the court's failure to instruct the jury on Mr. Ramdass' effective parole ineligibility violated his Eighth and Fourteenth Amendment rights.

101. Regardless of its duration, the minimum length of incarceration facing a capital defendant for a life sentence is relevant mitigating evidence that bears on the determination of whether his future dangerousness to society warrants the death penalty. *Clark v. Tansy*, 882 P.2d 527 (N.M. 1994). "[I]n assessing future dangerousness, the actual duration of a defendant's prison sentence is indisputably relevant." *Simmons*, 129 L.Ed.2d at 142. Indeed, it is difficult to conceive of greater assurance of a defendant's nondangerousness to society than the fact he will effectively never be released on parole. *Id.*

102. Mr. Ramdass' effective parole ineligibility was undoubtedly a relevant factor both to rebut future dangerousness and to show why, even if he was a future danger, life imprisonment was an adequate and appropriate punishment. Mr. Ramdass' effective parole ineligibility is evidence from which the jury could have determined that a life sentence was a severe and sufficient punishment for the crime. To make a jury's choice between life and death a meaningful and intelligent one, the jury must know at least the extent of the capital

defendant's minimum period of incarceration before any possibility of parole.

103. Information about parole in a capital case mitigates a sentence of death by providing affirmative evidence that the defendant does not pose a future threat to society. *Skipper v. South Carolina*, 476 U.S. 1, 5 (1985). *Skipper* explicitly recognized that evidence of a defendant's lack of future dangerousness qualifies as mitigation in the penalty phase of a trial. *Id.* Because incarceration may substantially reduce the possibility of a defendant's future dangerousness, information about incarceration is mitigating and may not be excluded from the sentencer's consideration. *Id.* The Court's refusal to instruct the jury on Mr. Ramdass' effective parole ineligibility as mitigating evidence violated Mr. Ramdass' constitutional rights.

104. Mr. Ramdass was denied due process rights by being sentenced to death based on information which he did not have an opportunity to deny or rebut. At sentencing the Commonwealth argued to the jury that Mr. Ramdass was a future danger to society and emphasized that fact that the petitioner had previously been released on "mandatory" parole after serving only four years of a robbery sentence. (TR. 1/29/93 p. 85-86, 130-131.) The false impression created by the Commonwealth over the meaning of a life sentence became clear when the jury questioned the effect of Mr. Ramdass' parole eligibility on a life sentence. The trial court's refusal to instruct the jury accurately on the likelihood of Mr. Ramdass' parole from a life sentence, in light of his effective parole ineligibility, prevented Mr. Ramdass from effectively rebutting that false impression.

105. The United States Supreme Court's decision in *Skipper v. South Carolina*, 476 U.S. 1 (1986), sets forth the constitutional ground for the consideration of parole evidence where the prosecution has relied on evidence of future dangerousness:

> Where the prosecution specifically relies on a prediction of future dangerousness in asking for the death penalty, it is not only the rule of *Lockett* and *Eddings* that requires that the defendant should be afforded an opportunity to introduce evidence on this point; it is also the elemental due process requirement that a defendant not be sentenced to death on the basis of information which he had no opportunity to deny or explain.

Id. at 5 (quoting *Gardner v. Florida*, 430 U.S. 349, 362 (1977)). *Skipper* was founded on *Gardner's* holding that due process in a capital trial requires that the defendant be afforded an effective opportunity to rebut any aggravating factors which the state posits as a basis for imposing the death sentence. *Skipper*, 476 U.S. at 5 (relying on *Gardner*, 430 U.S. at 362).

106. As the prosecution relied solely on the future dangerousness aggravating circumstance, the issue of whether and when Mr. Ramdass would be released on parole was a critical factor in the jury's deliberations. The fact that Mr. Ramdass effectively would never be eligible for parole was highly relevant rebuttal evidence to an argument of future dangerousness. The need to present effective parole ineligibility information in rebuttal was compounded by the grave misconceptions held by jurors generally with regard to parole.

107. *Skipper* and *Gardner* articulates the concept that irrespective of whether the evidence of the defendant's actions after the crime constitute a mitigating circumstance under the standard set forth in *Lockett v. Ohio*, a capital defendant cannot constitutionally be sentenced to death on the basis of information which he has no opportunity to deny or explain. A capital defendant must be allowed to present information to rebut any type of evidence or argument the Commonwealth produces to prove future dangerousness in the penalty trial. Thus, because the Commonwealth relied entirely on the future dangerousness aggravator, Mr. Ramdass was denied a meaningful opportunity to rebut the Commonwealth's argument with information about the likelihood of his ever gaining his freedom in the future.

108. Assuming, without conceding, that Mr. Ramdass was technically eligible for parole at the time of the jury's question, he was unquestionably statutorily ineligible for parole by the time the trial judge imposed sentence. The trial judge's failure to consider Mr. Ramdass' actual parole ineligibility when imposing the death sentence violated Mr. Ramdass' Eighth and Fourteenth Amendment rights.

109. While a jury's recommendation of death is a necessary precursor to the imposition of a death penalty in Virginia, that sentence may not be imposed until after a presentence report is prepared containing the "history of the defendant and any and all other relevant facts, to the end that the court may be fully advised as to whether the sentence of death is appropriate and just." Va. Code § 19.2-264.5. That statute provides that "After consideration of the report, and upon good cause shown, the

court may set aside the sentence of death and impose a sentence of life imprisonment." Va. Code § 19.2-264.5. Thus, the judge must consider all constitutionally mandated factors and must not act arbitrarily when imposing the death sentence.

110. When Mr. Ramdass' death sentence was imposed on April 2, 1993, it is beyond question that he was statutorily ineligible for parole. Even applying the irrational standard for computing parole ineligibility that was announced by the Virginia Supreme Court in *Ramdass2*, Mr. Ramdass became ineligible for parole no later than February 18, 1993. On that date, Mr. Ramdass was sentenced and judgment was entered on the third qualifying felony, the Domino's Pizza robbery. On the same day, Mr. Ramdass also plead guilty and was sentenced for the robbery and firearms violation committed at the Bragg Towers Hotel, a fourth felony qualifying under § 53.1-151.

111. While trial counsel argued and the presentence report reflected Mr. Ramdass' statutory parole ineligibility, the trial judge ignored Mr. Ramdass' parole status. Because the trial judge had already exhibited his awareness of and deference to the then-position of the Virginia Supreme Court that sentence should be imposed without concern to what may happen afterwards, it must be assumed that the trial judge followed what he believed to be the law and excluded information of Mr. Ramdass' parole ineligibility from his own consideration of whether the death sentence was appropriate. In doing so, he denied Mr. Ramdass' Eighth and Fourteenth Amendment right to have the sentencer consider all the relevant facts. Just as he instructed the jury to refrain from considering parole when determining the appropriate sentence,

the trial judge obviously complied with the law as he believed it to be and did not "concern" himself with Mr. Ramdass' parole status.

112. The principles established in *Gardner* and *Skipper* do not distinguish between sentencing jury and sentencing judge. *Simmons v. South Carolina*, 129 L. Ed. 2d at 133. The only reason for informing a jury about parole is so they can give effect to that information. *See generally Penry v. Laynaugh*, 492 U.S. 302 (1989) (defendant entitled to instruction informing jurors how to give effect to mitigation evidence). A judge who knows of a defendant's parole ineligibility but who refuses to give any effect to that information violates the defendant's constitutional rights as surely as a jury that does not give effect because it does not know about parole ineligibility. The judge was constitutionally bound to consider all relevant sentencing information. Based upon the court's articulated view of the law, it is axiomatic that he did not do so. When the trial judge imposed the death sentence, Mr. Ramdass was statutorily ineligible for parole and there was a greatly diminished likelihood that he would commit criminal acts of violence in the future. Without the consideration of Mr. Ramdass' parole status and its effect on the appropriateness of the death sentence, the judge's imposition of the death penalty was arbitrary and unconstitutional.

113. The judge violated Mr. Ramdass' rights to due process by failing to consider his parole ineligibility when actually imposing the death sentence. When state law creates a right which involves a person's liberty, the individual possessing this right is constitutionally entitled to due process with regard to that right. *Krawetz v. Murray*, 742 F.Supp. 304, 305 (E.D. Va. 1990) (Clarke, J.).

As the Supreme Court recognized in *Paul v. Davis*, 424 U.S. 693, 710 (1976).

> there exists a variety of interests which are difficult of definition but are nevertheless comprehended within the meaning of either 'liberty' or 'property' as meant in the Due Process clause. These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law and . . . procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter that protected status.

Thus, as the Virginia legislature has conferred on capital defendants the right to have the judge determine the appropriateness of the jury's recommended death sentence before that sentence may be imposed, the judge's determination must comply with due process requirements. As demonstrated by his instruction to the jury to refrain from considering parole when determining the appropriate sentence, the judge complied with the law as he believed it to be and presumptively excluded parole eligibility information from his determinations. This failure to consider relevant information rendered the trial judge's determinations, that the death sentence was "appropriate and just" and that "good cause" did not exist to set aside the jury's recommendation of death, unconstitutionally arbitrary. A determination as to whether a death sentence based on Mr. Ramdass' continuing threat to society is appropriate, but which ignores his permanent separation from most of society, is a farce. The judge's exclusion of parole eligibility information effectively annulled the rights conferred on Mr. Ramdass

by Virginia Code § 19.2-264.5 and protected by the Fourteenth Amendment's due process clause.

114. Just as the trial court's failure to consider Mr. Ramdass' parole ineligibility was mandated by the Constitution, the Virginia Supreme Court, as the final arbiter of the death sentence, also was constitutionally bound to consider Mr. Ramdass' parole eligibility.

115. The Virginia Supreme Court's unreasonable failure to set aside Mr. Ramdass' death sentence based on the unconstitutional exclusion of parole eligibility information below violated Mr. Ramdass' Eighth and Fourteenth Amendment rights. Virginia Code § 17-110.1 provides that a death sentence "shall be reviewed on the record by the Supreme Court." Va. Code § 17-110.1A. Without request by any party, the clerk of the circuit court, within ten days of receipt of a transcript must compile the record and transmit it to the Virginia Supreme Court. Va. Code § 17-110.1(B). In addition to any errors specifically noted on appeal, the Virginia Supreme Court "shall consider and determine" whether the death sentence "was imposed under the influence of passion, prejudice or any other arbitrary factor [or] is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Va. Code § 17-110.1C. Upon review, the court is given specific options to either affirm the sentence, "commute the sentence of death to imprisonment for life" or remand for a new sentencing procedure. The case stands "matured as if an appeal had been awarded to review the conviction and the sentence of death . . . and the enforcement of the sentence of death shall thereby be stayed pending the

final determination of the case by this court." Va. Code § 17-110.1A.

116. The Code and the Rules together require an automatic appeal to the Virginia Supreme Court whether or not the defendant requests one. Even if no assignments of error are made by the defendant, the Supreme Court must consider and determine whether the sentence was influenced by passion, prejudice or other arbitrary factors. *Chabrol v. Commonwealth*, 245 Va. 327, 427 S.E.2d 374 (1993). Upon the automatic review, the Supreme Court can commute the sentence to life imprisonment. Thus, the sentence is "not final" and cannot be carried out until the Virginia Supreme Court completes its review process. This is not a casual step in the process leading to execution. Where the trial judge evaluates the issue of good cause and the presentencing report and, necessarily the issue of future dangerousness, the Virginia Supreme Court is expressly required to consider whether the decision below was "arbitrary."

117. The Virginia Supreme court's unreasonable failure to consider Mr. Ramdass' then-current parole ineligibility, when it "considered and determined" that Mr. Ramdass' death sentence was not "imposed under the influence of passion, prejudice or any other arbitrary factor" violated Mr. Ramdass' Eighth and Fourteenth Amendment rights. When faced with the issue on November 5, 1993, during the first direct appeal, *Ramdass v. Commonwealth*, 246 Va. 413, 437 S.E.2d 566 (1993), the Court held that the sentencing jury was not entitled to information of Mr. Ramdass parole status. On remand, in *Ramdass v. Commonwealth*, 248 Va. 518, 450 S.E.2d 360 (1994) *cert. denied*, 115 S. Ct. 1800 (1995), the Court, taking

a view of *Simmons* that was inconsistent with established law, held that *Simmons* (1994), did not apply to Mr. Ramdass, as he was not *statutorily* ineligible for parole on the day the jury asked the question on January 29, 1993. (TR. 1/29/93 p. 278.) By focusing on the improper time frame, the Virginia Supreme Court considered the wrong question. Mr. Ramdass became statutorily ineligible for parole on February 18, 1993. As Mr. Ramdass' death sentence was not final until the mandatory appeals process was extinguished, the courts' repeated failures to allow consideration of Mr. Ramdass' effective parole eligibility or his statutory parole eligibility had a substantial and injurious effect or influence on upholding the death sentence. The Supreme Court's failure to consider his parole ineligibility when determining the appropriateness of a death sentence founded upon his future dangerousness to society was arbitrary and unconstitutional. It had a substantial and injurious effect or influence on the sentencing decision.

* * *

EXHIBIT L

IN THE JUVENILE AND DOMESTIC
RELATIONS DISTRICT COURT OF FAIRFAX, VIRGINIA

COURT REPORT

NAME: BOBBY LEE RAMDASS

DOB: 10/19/71 VERIFIED: SCHOOL RECORDS

RACE: MIXED SEX: M

ADDRESS: 3314 LOCKHEED BOULEVARD
#201
ALEXANDRIA, VIRGINIA 22306

CASE:115791-P

MOTHER: PEGGY RAMDASS

FATHER: CHAN DRADTHA RAMDASS

COURT DATE: SEPTEMBER 6, 1985

On August 5, 1985 Bobby Ramdass was found within the court's purview on one charge of grand-larceny, purse-snatching, before Judge Jane P. Delbridge. Judge Delbridge continued this case for preparation of this investigation and report and disposition is set to be heard on September 6, 1985.

This purse-snatching involved Bobby pulling a purse from a woman walking in the vicinity of Beacon Mall Shopping Center. An acquaintance of Bobby's identified him to the police and upon questioning Bobby admitted his involvement. The purse was subsequently recovered with $300 out of $350 originally in the purse, returned to the victim.

Bobby relates he took the purse because he needed money to pay for a moped. The prior owner was putting pressure on Bobby to complete his payments. Bobby indicates he was fully responsible for his actions but a friend (Raymond Taylor CFN: 109077-P) prodded him on. Further, Bobby reflects he would never repeat such a behavior.

Bobby's only prior court contact involved a July 9, 1985 Wreckless Driving Offense. This involved running a red-light on a moped for which Bobby was fined $250 in his absence on July 24, 1985.

Mrs. Ramdass reports Bobby and his brother were both placed in Alexandria City D.S.S. custody in March 1983. Mrs. Ramdass had no place to live at that time. The children returned to Mrs. Ramdass's physical custody in September 1983, however, legal custody remained with D.S.S. until February, 1985. Mrs. Sandra Cory Alexandria Department of Social Services confirmed information reported in an Alexandria Probation Pre-Sentence Investigation on Mrs. Ramdass. These statements indicated " . . . the defendant (Mrs. Ramdass) uses the boys for emotional support and they appear to be more adult than she . . . Mrs. Cory indicated that she does not foresee the defendant ever regaining custody of her children, but they will continue to let her children reside with the defendant unless the situation deteriorates once again." Alexandria D.S.S. closed its case on this family as they were residing in Fairfax County.

Bobby, his brother, and mother share a 2 bedroom garden apartment which they rent for $490 a month. The apartment is modestly furnished and appears neat and clean.

Bobby shares a room with his brother, which likewise is neatly kept and includes a bunk bed, bureau and T.V. Mrs. Ramdass describes the neighborhood as having a negative impact on Bobby because he chooses all the wrong people to associate with. Mrs. Ramdass indicates the apartment lease (in a friend's name) expires on September 1, 1985 and she is uncertain where the family will reside thereafter.

The Ramdass 3314 Lockheed Boulevard address is located in the Eybia Valley of the County, one block from Route One. The apartment is a part of a large garden-apartment complex, in a residential area of other apartments, townhouses and single family homes. The area has a varied population of lower middle income residents and is considered to have a moderately high crime rate. Recreationally there is a school, ball fields, and Huntly Meadows Park across the street from the home. Shopping and bus transportation are available along Route One.

The Ramdass family has been at their present address for one year. Prior to this Mrs. Ramdass reports a history of constantly changing addresses, sometimes moving every few months. Mrs. Ramdass has lived in the Northern Virginia area for 10 years.

Peggy Ann (Glasco Ramdass, mother, was born January 29, 1949 in Washington, D.C. Mrs. Ramdass is one of twenty-one children born to Raymond and Margaret Glasco. A pre-sentence investigation provided by the Alexandria Probation Department described Mrs. Ramdass' childhood as filled with neglect, abuse illegible and runaways. The pre-sentence investigation resulted from Mrs. Ramdass having been found guilty on a charge of

uttering on August 1, 1984 for which she received one year probation. This is Mrs. Ramdass' only prior court record. Mrs. Ramdass reports having completed a tenth grade education, and that she is in special education classes. The Alexandria D.S.S. indicates Mrs. Ramdass has significant intelligence limitations. Medically, Mrs. Ramdass describes her health as not good, largely due to back problems. The Alexandria PSI reflected Mrs. Ramdass' health history included syphillis, [sic] gonorrhea, hemorrhoid problems and being sickly as a child.

Mrs. Ramdass is currently unemployed and receives aid to dependent children. She was last employed at the Days Inn Motel as a maid in October, 1984. Her back problems prevent her from continued employment.

Mrs. Ramdass married Bobby's father, Chan Dradtha Ramdass, in September, 19 [illegible]. The marriage lasted five years. According to the Alexandria PSI, Mr. Ramdass did not believe Bobby was his child and was very physically abusive to Bobby, and his brother, Mark. Mark was born in 1972. (Mark currently lives at home and attends Sandburg Intermediate School). The Alexandria report indicates the family has had no contact with Mr. Ramdass since 1982.

Also according to the Alexandria PSI, Mrs. Ramdass has had two significant relationships since her marriage. One with Mr. Barbebara Sanches, involved physical abuse of both she and her children. The second relationship is a Mr. George Washington. Mrs. Ramdass reports this relationship has been on and off for years, and is currently ongoing.

Mrs. Ramdass describes her relationship with Bobby as a good and communicating one. She reflects that Bobby is both mindful of her instructions and at the same time he will come and go as he pleases. As the oldest child Mrs. Ramdass reports Bobby is very anxious to grow up and have adult privileges without adult responsibilities.

Bobby Ramdass was born on October 19, 1971 in Washington D.C. Bobby is approximately 5 feet, 6 inches tall, weighs 148 pounds, has brown eyes, and black hair. He has a dark tan skin color and a large birthmark on his left leg. According to Mrs. Ramdass Bobby is in good health and experienced a normal childhood development. It would be this counselor's opinion that "normal childhood development" would be difficult to believe in light of Mrs. Ramdass unstable background.

Educationally Bobby will be repeating the seventh grade at the new Sandburg Intermediate School. His final grades of June 1985 were as follows:

History	D	Math	F
Art	C	Life Science	D
Art Advanced	F	Experiential Tech	D
English	F	H-PE	F

However, these grades are in contrast to educational records which indicate Bobby has average academic ability. According to Bobby's guidance counselor Bobby is a pleasant young man but he did have a series of minor disciplinary suspensions. The suspensions involved

horseplay and inappropriate methods of seeking others' attention.

Bobby indicates he generally likes school and has many friends. He admits, however, to getting in fights because he was a "new kid" in the school. Bobby's favorite class is English and his least favorite is math. He believes his poor grades last year were due to family problems. He claims he was worried about there being enough money and food in the house. Currently Bobby relates this is not a problem.

In his free time Bobby likes to spend time with friends, go swimming, and participate in sports. His future goal is to be a police officer, because he likes excitement and he has knowledge of the streets. Bobby admits to trying alcohol but not to any regular use.

Family relationships are described by Bobby as satisfactory. He views his mother as a nice and fair person, who tends to be a little bit strict. Bobby relates he generally gets along well with his brother. Regarding his mother's boyfriend, Bobby relates his mother follows Mr. Washington's instructions too often, which Bobby finds aggravating.

Bobby Lee Ramdass, 13 years old, is before the court for disposition of one charge of grand-larceny, purse-snatching. This is Bobby's second court contact in two months' having been found not innocent of wreckless driving of a moped Bobby did indicate to this counselor he truly understands his behavior was unacceptable.

Bobby's family background appears to be an [sic] extremely unstable and chaotic. There is often times uncertainty as to how basic food, clothing and home needs will be met. Additionally there is a history of physical abuse and a time

when physical custody was taken by D.S.S. Further, Mrs. Ramdass, is well meaning, has significant physical, emotional, and intellectual limits.

Academically Bobby appears to have average ability. It is only in the [illegible] that Bobby's grades have been below average and failing. Behaviorally described as a pleasant student yet there had been a series of attention suspensions during the last school year.

It is rather surprising in this counselor's opinion that Bobby's school community behaviors are not a great deal worse than they currently are. For this reason probation as a support system and consequence for Bobby would be entirely appropriate. Additionally a short period of community service would help Bobby better understand the value of property. Also while on probation, this case would be monitored for possible referral to the Department of Social Services.

It is recommended that Bobby Ramdass be placed on supervised probation, for a period of one year. Further that he should be ordered to complete 75 hours of community service.

Respectfully Submitted,

/s/ Gerald M. Smollen
GERALD M. SMOLLEN
Probation Officer

/s/ David G. Rathbun
DAVID G. RATHBUN
SUPERVISOR,
SOUTH COUNTY [Illegible]

Report Typed 8/30/85

GMS/lsf